

10-27-2011

# Seiniger Law Offices, P.A. v. State Agency's Record v. 4 Dckt. 38037

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# LAW CLERK

Vol. 4 of 7

## BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

SEINIGER LAW OFFICES, P.A., )

Real Party in Interest/Appellant, )

and )

MARIA GOMEZ, Claimant (IC 2005-510285), )  
v. )

NAMPA LODGING INVESTORS, LLC, )  
Employer, and LIBERTY NORTHWEST )  
INS. CORPORATION, Surety, )

Defendants/Respondents, )

and )

STATE OF IDAHO, ex rel., INDUSTRIAL )  
COMMISSION, )

Intervenor/Respondent. )

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SEINIGER LAW OFFICES, P.A., )

Real Party in Interest/Appellant, )

and )

LAUREL KULM, Claimant, (IC 2006-012770), )  
v. )

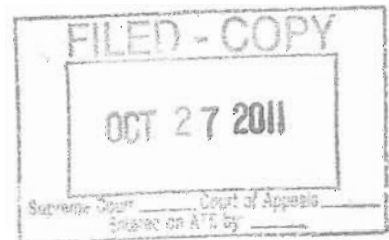
MERCY MEDICAL CENTER, Employer, )  
and INDUSTRIAL CLAIMS )  
MANAGEMENT, Surety, )

Defendants/Respondents, )

and )

**SUPREME COURT NO. 38037**

**AGENCY'S RECORD  
VOLUME 4**



# 38037

# COPY

**BEFORE THE SUPREME COURT OF THE STATE OF IDAHO**

SEINIGER LAW OFFICES, P.A., )  
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**SUPREME COURT NO. 38037**

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**COPY**

STATE OF IDAHO, ex rel., INDUSTRIAL )  
COMMISSION, )

Intervenor/Respondent. )  
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Real Party in Interest/Appellant, )

and )

CODY DROTZMAN, Claimant (IC2006-006711), )  
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COORS BREWING COMPANY, Employer, and )  
COORS BREWING COMPANY, Self-Insured, )

Defendants/Respondents, )

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TIM STIENMETZ, Claimant (IC 2008-002191), )  
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G2B CO., INC., Employer, and IDAHO )  
STATE INSURANCE FUND, Surety, )

Defendants/Respondents, )

STATE OF IDAHO, ex rel., INDUSTRIAL )  
COMMISSION, )

Intervenor/Respondent. )  
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**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

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## **LIST OF EXHIBITS**

**Reporter Transcripts were requested by Appellant and Intervenor, as exhibits only, and are identified as Additional Documents below.**

### **CLAIMANTS' EXHIBITS:**

#### **KULM**

Affidavit of Wm. Breck Seiniger, Jr. in Support of Claim for Attorneys Fees, dated November 23, 2009 with the Exhibits, Nos. 1 – 33.

#### **STIENMETZ**

Affidavit of Andrew Marsh in Support of Claim for Attorneys Fees, dated May 10, 2010 with the Exhibits, Nos. 1 – 9.

Claimant's Counsel's Admissions for Attorney Fee Hearing, dated May 10, 2010 (found in Agency Record on page 467 of Volume 3).

#### **GOMEZ**

Affidavit of Andrew Marsh in Support of Claim for Attorneys Fees, dated April 12, 2010 with the Exhibits, Nos. 1-10.

Claimant's Counsel's Admissions for Attorney Fee Hearing, dated April 12, 2010 (found in Agency Record on page 567 of Volume 3).

### **ADDITIONAL DOCUMENTS:**

1. Transcript of Hearing on November 23, 2009, Laurel Kulm v. Mercy Medical Center and Indemnity Insurance Company of NA; I.C. No. 2006-012770.
2. Transcript of hearing on May 11, 2010, Tim Stienmetz v. G2B Co., Inc. and State Insurance Fund, I.C. No. 2008-002191.
3. Transcript of Hearing on April 12, 2010, Maria Gomez v. Nampa Lodging Investors, Inc., and Liberty Northwest Insurance Corporation; I.C. No. 2005-510285

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 INDUSTRIAL COMMISSION

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

**Maria Gomez,  
 Claimant,**

**vs.**

**Nampa Lodging Investors LLC,  
 Employer,**

**And**

**Liberty Northwest,**

**Surety,  
 Defendants.**

**I.C. No. 05-510285**

**CLAIMANT'S COUNSEL'S  
 OPENING BRIEF**

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## I. INTRODUCTION

Claimant was injured in the workplace and solicited and entered into a fee agreement ("Fee Agreement") with Seiniger Law Offices, P.A. ("Counsel") under which Counsel agreed to provide legal counseling and representation on all matters related to Claimant's case in consideration of the contingent fee set forth in the Fee Agreement. Counsel provided extensive services as counselor and advocate from 2005-2009, during which Claimant received permanent partial impairment ("PPI") benefits. Counsel ultimately negotiated a Lump Sum Settlement Agreement ("LSSA") for Claimant. Counsel sought approval of contingency attorney fees on the PPI and LSSA benefits. The Commission denied the attorney fees on the PPI on the grounds that Counsel was not "primarily or substantially" responsible for securing the benefit as allegedly



required by IDAPA rules. The Commission Staff provided no statement of reasons for its ruling, and rebuffed Counsel's attempts to discover the factual and legal basis for the ruling. Counsel requested an attorney fee hearing, which was held on April 12, 2010. Counsel testified by affidavit, and no party presented any contrary evidence.

## II. FACTS

The facts are not in dispute. Pursuant to a Fee Agreement<sup>1</sup>, Counsel provided extensive legal counseling and advocacy services to Claimant in the above-captioned matter from 2005-2009. These services are set forth in the Affidavit of Andrew Marsh filed at the Hearing and the Exhibits attached thereto.

### ***A. THE COMMISSION DENIED ATTORNEY FEES ON PPI***

Claimant and Defendants submitted a "Lump Sum Settlement Agreement" to the Commission, which issued its "Order Approving in Part Stipulation and Agreement of Lump Sum Discharge" (Order) on January 4, 2010.<sup>2</sup> The Commission denied Counsel's request for approval of an attorney fee of \$933.28 for permanent partial impairment (PPI) benefits, stating that "Commission staff has previously informed Claimant's Attorney that staff has been unable to determine that such a fee should be recommended for approval." The Commission Staff Letter (dated December 24, 2009) to which the Order refers stated that "it is unclear from the documentation and other evidence that you have asked us to consider, that Counsel was primarily or substantially<sup>3</sup> responsible for obtaining those benefits."

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<sup>1</sup> Affidavit of Andrew Marsh, Exhibit A.

<sup>2</sup> The Commission approved Counsel's request for an attorney fee of \$3051.53 for LSSA benefits.

<sup>3</sup> IDAPA 17.02.08.033.01(c) states that an attorney seeking fees must demonstrate *inter alia* that "ii. The services of the attorney operated primarily or substantially to secure the fund out of which the attorney seeks to be paid."

## ***B. THE COMMISSION DENIED COUNSEL'S MOTION FOR STATEMENT OF REASONS***

In response to the Order, Counsel filed a "MOTION FOR STATEMENT OF REASONS FOR DENIAL OF ATTORNEY FEE PURSUANT TO IDAPA 17.02.08.033.03(a)"<sup>4</sup> on January 12, 2010. The Commission issued its "Order Denying Motion Re: Attorney Fees" on February 11, 2010, stating only that "Claimant's counsel failed to provide sufficient evidence demonstrating that he acted primarily or substantially to secure the fund from which the fees were being requested. In order for the fees to be deemed reasonable, such evidence must be provided." This statement is a conclusion;<sup>5</sup> it is apparently the Commission's position that the plain language of the regulatory scheme notwithstanding, the IDAPA rule only requires a naked conclusion, and need not be clothed with actual reasons.<sup>6</sup>

## **III. ADMISSIONS BY COUNSEL**

### ***A. COUNSEL CANNOT PROVE THAT HE WAS "PRIMARILY OR SUBSTANTIALLY" RESPONSIBLE FOR THE PPI OR LSSA BENEFITS IF THE STANDARD IS "THE BUT-FOR TEST"***

At the April 12, 2010, hearing, Counsel filed CLAIMANT'S COUNSEL'S

ADMISSIONS FOR ATTORNEY FEE HEARING. The ADMISSIONS read as follows:

For purposes of these proceedings, Counsel is using the phrase "but-for test" as shorthand for a standard of proof that means that in order to prove the element of "primarily or substantially" (IDAPA 17.02.08.033.01.c.ii.), Counsel is required to prove the causal link between Counsel's representation and the payment of benefits by demonstrating *nothing less* than that *without* his representation, the benefits would not have been paid.

<sup>4</sup> IDAPA 17.02.08.033.03(a) reads in pertinent part: "the Commission will designate staff members to determine reasonableness of the fee. The Commission staff will notify counsel in writing of the staff's informal determination, which shall state the reasons for the determination that the requested fee is not reasonable."

<sup>5</sup> The legal dictionary at <http://dictionary.lp.findlaw.com> defines "conclusion" as "an opinion or judgment offered without supporting evidence; *specif*: an allegation made in a pleading that is not based on facts set forth in the pleading."

<sup>6</sup> The legal dictionary at <http://dictionary.lp.findlaw.com> defines "reason" as "an underlying ground, justification, purpose, motive, or inducement. Example: required to provide reasons for the termination in writing." In other words, a statement of reasons must include the underlying grounds, i.e. a factual and legal basis, neither of which was ever provided to Counsel.

Counsel makes the following admissions:

1. For purposes of these proceedings only, and without waiving the right to raise the constitutionality of the applicable IDAPA attorney fee rules on appeal, **Seiniger Law Offices admits that it cannot prove that its attorneys were “primarily or substantially” responsible for securing the permanent partial impairment (PPI) benefit and the other benefits paid as consideration for lump sum settlement (LSS) if the standard of proof is the “but-for test.”** (emphasis in original)

***B. COUNSEL CANNOT PROVE THAT THE BENEFITS WERE “DISPUTED” BY THE DEFENDANTS***

The ADMISSIONS continue as follows:

2. For purposes of these proceedings only, and without waiving the right to raise the constitutionality of the applicable IDAPA attorney fee rules on appeal, **Seiniger Law Offices admits that it cannot prove that the Defendants “disputed” the permanent partial impairment (PPI) benefit and the other benefits paid as consideration for lump sum settlement (LSS) before the Defendants paid those benefits.** (emphasis in original)

In the instant case, Counsel received a call on 10/14/09 from Scott McDougal of the Commission Staff in which he requested *inter alia* that Counsel provide documents<sup>7</sup> to show what issues were in “dispute” when Counsel was retained.<sup>8</sup> This requirement of proof of a “dispute” seems to stem from the IDAPA definition of “Available Funds,”<sup>9</sup> which not only includes the “primarily or substantially” element, but also excludes “compensation . . . not disputed to be owed prior to claimant’s agreement to retain the attorney.”

#### **IV. ISSUES**

Counsel’s position is that:

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<sup>7</sup> Counsel could find no legal authority to support the Commission’s apparent position that proof of a “dispute” must be in *documentary* form. Throughout the history of American jurisprudence, courts have admitted evidence even if it is in non-written forms, such as testimonial, demonstrative, etc.

<sup>8</sup> Affidavit of Andrew Marsh, ¶ 6.1.1

<sup>9</sup> 17.0.08.033.01.a.

- Seiniger Law Offices is constitutionally and legally entitled to the claimed attorney fees in full;
- The Commission's regulations relating to the definitions of "available funds" and the associated standard defining them as benefits "primarily and substantially" made available as a result of the efforts of Counsel are vague and unconstitutional as written and/or as interpreted or applied under controlling case law laid down by the Idaho Supreme Court;
- The Fee Agreement involved was reasonable, especially when viewed at the time that it was entered into;
- Counsel and Claimant are constitutionally entitled to have their Fee Agreement honored unless it is patently unreasonable (outside the guidelines furnished by IDAPA attorneys fees rules); and
- The services provided by Counsel were lawful, important, valuable, and compensable pursuant to controlling case law.<sup>10</sup>

These, then, are among the central issues.<sup>11</sup> The dollar amounts of the attorney fees at issue are \$933.28 on PPI benefits, and \$3051.53 on "Consideration of lump sum settlement"

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<sup>10</sup> Lest there be any confusion as to Counsel's position, let us be clear: it is NOT Counsel's position that Counsel is entitled to an attorney fee "even where, in a particular case, surety had not denied or disputed Claimant's entitlement to a PPI rating prior to Counsel's retention," as implied by the Commission in *Drotzman v. Coors Brewing Company and Zurich American Insurance Company*, I.I.C. No. 2006-006711, Order on Attorney Fees (6/8/2010), p. 8. It is also NOT Counsel's position that Counsel "is entitled to an award of attorney's fees consistent with the terms of the Contingent Fee Agreement executed by Claimant, the regulatory scheme notwithstanding," as stated by the Commission in *Kulm v. Mercy Medical Center and Industrial Claims Management*, I.I.C. No. 06-012770, Findings of Fact and Conclusions of Law relating to Counsel's request for Approval of Attorney Fees (5/20/10), p. 10. *Drotzman* is not a "companion case" to the instant case, *Kulm*, p. 34. Neither is *Kulm*.

<sup>11</sup> Other issues were raised in Counsel's "Request for Hearing on Order Approving in Part Stipulation and Agreement, Release and Lump Sum Settlement," filed January 11, 2010 and incorporated herein by reference. Due to limitations on the allowable length of a brief, it is not possible to address all of these issues here.

benefits.<sup>12</sup>

## **V. CONTROLLING LEGAL AUTHORITY**

The argument which follows is based upon the premise that the constitutional holdings in *Curr v. Curr*, 124 Idaho 686, 864 P.2d 132 (1993) control the rights of claimants' counsel in workers' compensation cases. *Curr* has not been implicitly overruled by the Idaho Supreme Court, and remains good law. It controls the bounds of discretion of the Commission in determining the reasonableness of a claim for attorney fees and other aspects of the authority granted to the Commission and the exercise of that authority.

## **VI. LEGAL ARGUMENT, PART I**

### ***A. THE COMMISSION MUST TAKE CONSTITUTIONAL REQUIREMENTS INTO CONSIDERATION IN ADOPTING, INTERPRETING, AND IMPLEMENTING ITS OWN REGULATIONS***

The Commission may not adopt a regulation that clearly flies in the face of the constitutional limitations on its authority set forth in *Curr* and may not apply its "primarily or substantially" rule in such a way as to patently violate that authority. Counsel is aware of no authority to the contrary.

### ***B. THE CONSTITUTIONAL RIGHTS OF CLAIMANT'S COUNSEL AND CLAIMANT ARE GOVERNED BY CURR***

We begin by reviewing the actual holdings from *Curr*, set forth in quotes (emphasis

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<sup>12</sup> The reason that attorney fees on lump sum benefits as well as PPI benefits are at issue is that *Curr* requires "clearly articulated evidentiary standards . . . and clear guidelines" for determining the reasonableness of attorney fees. *Curr* at 692. Counsel submits that the Commission may not "cherry-pick" benefits to which it will apply its interpretation of the "primarily or substantially" element and the "disputed" element, i.e. it must apply the same level of proof and the same standards to requests for attorney fees based on disability benefits obtained as it applies to impairment benefits obtained. Since on the face of it the "primarily and substantially" standard is applicable to *all* benefit categories, the Commission may not apply the standard to certain selected categories of benefits (PPI) to the exclusion of others (PPD) for the purpose of disallowing attorney fees. To do so would arbitrarily discriminate based on the type of benefit obtained, and this would be a direct violation of *Curr*.

added):

- For an attorney fee agreement, “**Reasonableness . . . derives from the totality of the circumstances from the perspective of the parties at the time that the fee agreement was made.**”

*Curr*, at 690.

- The “parties to a contract have a **property interest in the subject matter of the contract** that is protectable both under the Contract Clause and the Due Process Clause of the United States Constitution.”

*Curr*, at 691-692.

- In Idaho, “**the right to follow a recognized and useful occupation is protected by a constitutional guarantee** of liberty under the Fourteenth Amendment to the U.S. Constitution and Idaho Const. art. 1, § 13.”
- The Commission must permit the Claimant to “compensate an attorney for acting **solely** as a **counselor**.”
- The Commission must “recognize [advocacy] **efforts that do not generate monetary awards** such as [sometimes] obtaining permission for medical care or procuring an impairment rating.”
- The Commission may not make suspect an attorney’s “**integrity in the eyes of their clients**.”
- The Commission may not limit attorney fees to “**new money**.”
- The Commission may not limit representation to “**disputed matters**.”
- The Commission “must have **clearly articulated evidentiary standards** that will be used at the hearing . . . and formally publish **clear guidelines** upon which it will base the fee modifications.”

*Curr*, at 692.

- “This Court has recognized that a **reasonable contingent fee must be ‘sufficiently high** to compensate the lawyer not only for the reasonable value of the time he or she anticipates devoting to the particular lawsuit, but also for the time devoted to other lawsuits undertaken on the same basis but unsuccessful in result.”

*Curr*, at 693.

*Curr* has not been implicitly overruled by *Rhodes v. Indus. Comm.*, 125 Idaho 139, 868 P.2d 467 (1993), *Mancilla v. Greg*, 131 Idaho 685, 963 P.2d 368 (1998), and *Johnson v. Boise Cascade Corp.*, 134 Idaho 350, 2 P.3d 735 (2000). None of these cases even mention *Curr*, much

less address the constitutional questions that were raised in *Curr*.

Counsel respectfully submits that the Commission's interpretation and application of its IDAPA rules are, in Counsel's opinion, patently contrary to *Curr*. Nonetheless, in *Kulm* the Commission plunges its way into a Cretan Labyrinth of contorted reasoning in an attempt to demonstrate that even though it relies on *Rhodes* to support those of its positions that directly contradict the mandates of *Curr*, it has not determined that *Curr* has been "overruled."

Ultimately, having failed to eradicate the Minotaur that is the irrefutable logic of *Curr*, it abandons the quest and simply concludes that "in considering the regulation adopted by the Commission in 1992, the Rhodes Court found either the entire regulation, or, at the very least, that portion of the former regulation that is the direct antecedent to the provisions of the current regulation which are at the heart of the instant dispute, to be constitutional." *Kulm*, p. 15.

Interestingly, the Commission has asserted that "Curr was decided in 1991." *Kulm*, p. 12. However, the published opinion for *Curr* was dated Nov. 18, 1993. The *Rhodes* opinion was dated Dec. 3, 1993, rehearing denied Feb. 3, 1994. Moreover, IDAPA 17.02.08.033.05 says that the section of the rule that contains the language relating to "primarily or substantially" and "disputed" benefits takes effect December 20, 1993.<sup>13</sup>

***C. THE COMMISSION'S APPLICATION OF ITS RULES VIOLATES THE "CLEARLY ARTICULATED EVIDENTIARY STANDARDS" REQUIREMENT OF CURR***

In *Kulm*, the Commission sets forth its definition of "primarily or substantially." Their definition of "substantially," as used in the phrase "operated . . . substantially to secure the fund out of which the attorney seeks to be paid, is this: "that a reasonable person would conclude that

<sup>13</sup> "Effective Dates. Subparagraphs i., ii., and iii. of Subsection 033.01.e. are effective as to fee agreements entered into on and after December 1, 1992. All other provisions shall be effective on and after December 20, 1993." IDAPA 17.02.08.033.05. Note that Subparagraphs i., ii., and iii. relate to the 25% caps on attorney fees, which cap was actually the sole issue in *Rhodes*.

he was responsible for securing the fund from which he hopes to be paid.” *Kulm*, p. 15. It is difficult to see how the word “substantially” can be defined as the conclusions of a reasonable person. The standard of “reasonable person” is used frequently in the law, and Counsel is aware of no authority to suggest that “the conclusions of a reasonable person” is synonymous with “substantially.” Counsel submits that the Commission’s application of this definition does not meet the “clearly articulated evidentiary standards” requirement of *Curr*.

In the Affidavit of Andrew Marsh submitted at the Hearing, Section 3.5.3 *et seq.* goes into great detail about the problems with the Commission’s use and application of the term “disputed,” and this need not be repeated here. Suffice it to say that the Affidavit provides evidence that the *Curr* requirement is not being met.

On a related topic, by definition “clearly articulated evidentiary standards” would include a standard for the level of proof required by Counsel, which according to IDAPA 17.0.08.033.03.d. is a preponderance of the evidence. This is defined by law as “evidence that is of greater weight, or is more convincing, than that offered in opposition to it.”<sup>14</sup> In terms of Counsel’s and Claimant’s right to have their Fee Agreement upheld, there was no contrary evidence offered at the hearing, nor is there any contrary evidence in the record. It is well-settled law that a tribunal may not make a ruling for which there is no factual support whatsoever, so on that basis alone the Commission may not deny the request for attorney fees.

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<sup>14</sup> ‘A “preponderance of the evidence” is evidence that, when weighed with that opposed to it, has more convincing force and from which results a greater probability of truth.’ *Harris v. Electrical Wholesale*, 141 Idaho 1, 3, 105 P.3d 267, 269 (2004).

“A preponderance of evidence is evidence that is of greater weight, or is more convincing, than that offered in opposition to it. The term does not mean preponderance in amount.” 32A C.J.S. Evidence § 1628

Clearly, the “probability of truth” is not just a function of the supporting evidence offered, but also of the weight of the evidence “offered in opposition to it.” If there is no evidence offered in opposition, a tribunal may not make a ruling contrary to that of the evidence that is offered.



***D. CLAIMANT'S COUNSEL'S ATTORNEY FEE REQUEST IS REASONABLE AS DEFINED BY CURR***

When an attorney takes a workers' compensation case, the risk of no recovery is great.

These risks are set forth in detail in the Marsh Affidavit, Section 3 *et. seq.*

Given the risks and the unknowable factors, the Supreme Court recognizes that "Reasonableness [of a fee agreement] . . . derives from the totality of the circumstances from the perspective of the parties at the time that the fee agreement was made." *Curr* at 690. For example, if at the time of contracting for an attorney the contracting parties had reasonable concerns that legal counseling or advocacy might be needed to address existing or potential disputes or issues, the benefit of hindsight may not be used for a finding that it was unreasonable to so contract.

In the instant case, the evidence shows that Claimant thought she needed help, Claimant's Counsel agreed to help her, and did provide legal services to her—for some four years. That more than meets the reasonableness test of *Curr*. The Commission may not lawfully second-guess the parties' decision to contract through the denial of a claim for attorney fees.

***E. THE COMMISSION MAY NOT SUBSTITUTE ITS HINDSIGHT-BASED OPINION FOR THAT OF THE CLAIMANT***

The Commission appears to be applying its rules in such a way as to substitute its hindsight-based opinion for that of the Claimant's opinion, formed at the time she chose to retain Counsel, as to what issues the Claimant thought were being disputed or might be disputed. Obviously, the Claimant thought *something* in her case was currently or potentially a dispute or a problem, or she would not have sought an attorney. In terms of evaluating the need for an attorney, why is the opinion of the worker who sought help while injured *of less value* than the Commission staff's opinion rendered four years later?

When the Commission staff rules that the attorney's services were not needed (i.e., of no value), it is also saying that the claimant was wrong to seek legal help. Did the legislature really intend for the Commission to decide who does and does not need the help of an attorney?

***F. THE SUPREME COURT SPECIFICALLY ALLOWS A REASONABLE CONTINGENCY FEE***

"This Court has recognized that a reasonable contingent fee must be 'sufficiently high to compensate the lawyer not only for the reasonable value of the time he or she anticipates devoting to the particular lawsuit, but also for the time devoted to other lawsuits undertaken on the same basis but unsuccessful in result.'" *Curr, at 693*. In other words, Idaho specifically allows attorneys' contingency fees to compensate claimants' attorneys for the risk factors referenced above, in addition to the value of their time. This applies to the instant case.

***G. THE COMMISSION'S APPROACH CREATES ETHICAL PROBLEMS FOR ATTORNEYS***

The Commission's approach creates a myriad of serious ethical questions for both claimant's attorneys and defense attorneys. These include:

- Since the Commission appears to be ignoring the Idaho Supreme Court's unequivocal prohibition of limiting attorney fees to "new money," is it now the Commission's position that an attorney can be required to provide legal services without compensation?
- Since the Commission appears to be ignoring the Idaho Supreme Court's unequivocal prohibition of limiting attorney fees to "disputed" matters, is it now the Commission's position that an attorney is not allowed to be compensated for services provided as counselor and advocate?

- Although under the Idaho Rules of Professional Conduct an attorney is entitled to limit the scope of his representation, is a claimant's attorney ethically permitted to accept responsibility for a case and but limit his representation to only matters that become disputed?
- If an attorney is ethically permitted to so limit his representation, may he decline to discuss certain issues with the defendants, and limit his discussions to disputed matters?
- If an attorney is ethically permitted to so limit his representation, may he give permission to opposing counsel to speak directly with the claimant as to undisputed matters? If so, would opposing counsel be ethically permitted to do so despite ethical prohibitions against contact with a party represented by counsel?

In addition, the Commission's approach automatically creates a potential conflict of interest between claimant's attorney and claimant anytime the Commission declines to approve an attorney fee that is otherwise reasonable under controlling case law. This forces an attorney into a fee hearing in which attorney and client have conflicting financial interests, and conflicts with the Supreme Court's holding that the Commission may not make suspect an attorney's "integrity in the eyes of their clients." *Curr*, at 692.

***H. THE COMMISSION IS ACTING IN VIOLATION OF PUBLIC POLICY AND IN VIOLATION OF AN ATTORNEYS RIGHT TO PRACTICE HIS PROFESSION***

The Commission has been interpreting or applying IDAPA 17.02.08.033 in such a way that it brings about the following results, all of which are against public policy:

- Claimants are less likely to be able to find counsel to take their case.

- Attorneys are discouraged from taking workers' compensation cases because the Commission does not honor their fee agreements with their clients.
- The attorney-client relationship is damaged by the Commission's creation of a conflict of interest between attorney and client each time the Commission finds the requested attorney fee to be unreasonable, and by the implication in each such instance finds that the attorney acted unfairly, unethically, or unreasonably.<sup>15</sup>
- The confidence of claimants and attorneys in the legal system is undermined when the Commission, via its website and its publications (see discussion *infra*), strongly encourages claimants to seek legal advice, but at the end of the case tells claimants and attorneys that it will not honor their fee agreement, and/or tells them that portions of the attorney's services were of no value, not timely, or not of consequence.
- When attorneys discontinue taking workers' compensation cases because the Commission does not honor their fee agreements, and when as a result claimants are unable to find counsel to take their case and as a result do not receive their full benefits under the workers' compensation law, the burden of medical and financial care for these unassisted claimants shifts from the insurers who collected employers' premiums to various public welfare and private charity organizations.<sup>16</sup>

<sup>15</sup> The latter is a violation of law as well as public policy, in that the Commission may not make suspect an attorney's "integrity in the eyes of their clients." *Curr at 692*.

<sup>16</sup> Put another way, injured workers who do not receive their full medical and income benefits due to lack of access to legal counsel do not just disappear; they still need help, so they surface at emergency rooms for medical care and welfare departments for income problems. The net cost to society is same—it is just that the cost of caring for injured workers is shifted from insurance companies who are protected from having to pay on policy claims (even though they collected premiums) to other governmental and charitable institutions. This shifting of the cost is clearly counter to public policy.

A related set of public policy concerns is whether the Commission should be prohibited from interpreting or applying IDAPA 17.02.08.033, including especially the “dispute” language of .01(a), in such a way that one or more of the following results:

- The plaintiff's bar is encouraged to work toward finding ways to foster, or at least to demonstrate and document, that there was a “fight, contest, or dispute” between the claimant and defendants.
- The more reputable attorneys are penalized, because they are less likely to have benefits disputed by the surety, and therefore, less likely to receive approval from the Commission for their attorney fees (and less likely to take on injured workers' cases in the future).
- The surety is essentially put in charge of determining how much a claimant's attorney will be paid, because attorney fees are based more on the surety's decisions of what to “dispute” than on the parameters of *Curr* or any of the factors enumerated in Rule 1.5 of the Idaho Rules of Professional Conduct regarding the value of the attorney's services.

The Idaho Supreme Court has recognized that public policy favors ensuring that claimants have access to counsel.<sup>17</sup> Counsel submits that the Supreme Court has never intended, nor would public policy favor, depriving Idaho's injured workers of their constitutional right to seek the advice and advocacy of counsel at every stage of a worker's compensation matter.

In addition, the Commission's interpretation and application of its IDAPA rules leads to results, including those listed herein, that are contrary to the legislative intent of “sure and certain

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<sup>17</sup> The *Curr* Court noted that “two general philosophies for the Commission to consider” are to “encourage claimants to pursue rightful legal claims and attorneys to take on such claimants' interests. *Hogaboom*, 107 Idaho at 17, 684 P.2d at 994.” *Curr v. Curr*, 124 Idaho 686, 693, 864 P.2d 132, 139

relief for injured workmen” (I.C. 72-201) in enacting the worker’s compensation law, and contrary to the delegation of power under I.C. 72-508 to “promulgate reasonable rules and regulations for effecting the purposes of this act.”<sup>18</sup>

## VII. LEGAL ARGUMENT, PART II

### ***A. BECAUSE THERE ARE MANY CIRCUMSTANCES WHERE AN ATTORNEY FEE MUST BE APPROVED EVEN WHERE THE ELEMENT OF “PRIMARILY OR SUBSTANTIALLY” IS ABSENT, THE REQUIREMENT OF THIS ELEMENT CANNOT BE SAID TO BE ABSOLUTE***

Is it the Commission’s position that the element of “primarily or substantially” must be applied even where doing so would lead to an unjust or unintended result? Counsel is aware of no authority that would support such an illogical interpretation of the workers’ compensation statute and controlling case law. It would make no sense to assume that the legislature, in granting rule-making authority to the Commission (I.C. 72-508) intended that the rules be applicable in such a way that the interests of justice are intentionally not served.

Let us examine how this issue would come up in practice: John Doe is a math teacher. One day at work, his little finger gets pinched in the door of his classroom and severely injured. The surety accepts his claim and starts paying medical bills and TTDs. Shortly thereafter, John goes to an attorney. The services he seeks are: an explanation of his rights and benefits under the law and how the law applies to the facts of his case; an explanation of work comp procedure and the statute of limitations; an explanation of his TTD rights and whether the surety is paying the correct amount; and help with some medical bills that have not been paid by the surety, and help with the collection agency that is pursuing him thereto. John has no money with which to pay an

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<sup>18</sup> “Without clear guidelines nestled in appropriately promulgated regulations, attorneys’ actions are plagued by doubt, which may have a chilling effect on the underlying purpose of the Workers’ Compensation Act that the Commission is constrained to promote.” *Curr at 691-692.*

hourly fee. The parties sign a contingency fee agreement including a clause allowing the attorney to be paid from the PPI award. The attorney provides these services and more: he discovers that John does not know about his right to medical mileage reimbursement or prescription co-pay reimbursement. Also, although the surety says it hasn't refused the primary treating physician's referral to a hand specialist, many weeks have gone by and still no approval has been forthcoming. Also, John doesn't know that he might have the right to a prosthesis. The attorney also straightens out the problem of the physician prescribing an antidepressant or sleep medication based on John's reaction to the injury, but the surety would not pay it because they claim there is no proof that John was not depressed before the accident. He also advises John on how to handle himself while attending the surety's IME appointment. He also advises him on the law regarding disability beyond impairment. During this time, infection sets in, resulting in amputation of John's finger. After fourteen months of the attorney providing counseling and advocacy services, John is found MMI and gets a 7.5% statutory PPI rating for loss of a finger. The surety pays it on time. John returns to work as a teacher and has no disability beyond impairment and no lump sum settlement agreement because the loss of his finger does not prevent him from teaching.

*In retrospect*, it is clear that from the very moment of John's accident, he was going to be entitled to a statutory PPI benefit of 7.5%. Is it the Commission's position that because the element of "primarily or substantially" could not be met for the PPI rating, that the attorney is not entitled to any compensation for his services?

Counsel submits that a reasonable person would find such a result to be patently unjust, and certainly not what the legislature intended in passing the statute or what the *Curr* decision contemplates. In that event, it cannot possibly be the law in Idaho that the element of "primarily

or substantially” is a *sine qua non* for the approval of an otherwise reasonable attorney fee.

In other words, if there are some circumstances where this portion of the IDAPA rules CANNOT be applied, then there can be no requirement that it must ALWAYS be applied.

Put another way, if the element of “primarily or substantially” is a requirement in every situation, even for the fairly common scenario above, then either the IDAPA rule itself or the Commission’s application of it must be unconstitutional.

The above example also demonstrates this point: under the Commission’s current approach, John will be unable to obtain legal representation (unless someone can take the case pro bono). This would have the effect of disenfranchising an entire class of injured workers (accidents that match the above teacher example) from what used to be the right of an injured worker in Idaho to hire and pay the attorney of his choice.

Is it now the rule in Idaho that regardless of how much work an attorney performs for an injured client before the PPI rating is issued, the attorney may not receive any fee from the PPI unless the Commission finds that he meets their definition of “primarily or substantially?” Although the questions raised in this brief are used as a rhetorical device, Counsel respectfully submits that it would in fact be helpful to injured workers and the plaintiff’s bar to have some of these questions answered.

***B. THE COMMISSION APPEARS TO TREAT FEES ON BENEFITS OTHER THAN PPI INCONSISTENTLY, BECAUSE IT DOES NOT REQUIRE PROOF OF THE ELEMENT OF “PRIMARILY OR SUBSTANTIALLY”***

If the Commission’s approach is that it is not reasonable to take an attorney fee on a PPI where it concludes that the element of “primarily or substantially” was not met, then it must analyze all other benefit types in the same way, because the IDAPA rules do not distinguish one



benefit category from another. So for example, let us assume that an attorney has vigorously represented a claimant for fourteen months, at the end of which the surety offers a lump sum settlement of \$5000. Ultimately, the case is settled for \$12,000. It could be argued that the attorney can only claim an attorney fee on the \$7000 difference, because the Commission's definition of "primarily or substantially" has not been met for the LSSA benefits. But in three decades of practice, Counsel knows of no case where the Commission has done that. Why not? This approach makes as much sense as the Commission's application of its rule to PPI benefits.

***C. THE COMMISSION HAS ALWAYS RECOGNIZED MANY SITUATIONS WHERE A SERVICE PROVIDER CAN BE PAID, EVEN IF THE ELEMENT OF "PRIMARILY OR SUBSTANTIALLY" IS ABSENT***

In the field of workers' compensation, the Commission allows a physical therapist to get paid for her services even if the therapy does not help the claimant. A retraining provider gets paid even if the claimant ultimately is unable to a job in that field. A doctor gets paid even if surgery fails to cure the claimant—or even if it kills the patient! The defendant's counsel gets paid even if he loses the case. In the entire field of workers' compensation service providers, it is only the claimant's attorney who has to "prove" that his legal services were "primarily or substantially" responsible for causing a benefit to inure to the claimant. Counsel knows of no legal authority that would provide support for such a discriminatory approach.

***D. THE COMMISSION MAY NOT ELIMINATE AN ENTIRE CLASS OF LEGAL SERVICES AS PER SE UNREASONABLE***

Assuming, as we must, that the Commission's determination of the reasonableness of a requested attorney fee is an exercise of discretion, then the Commission may not hold that certain legal services are per se unreasonable. For example, there is no authority for the position that a

legal service provided to a claimant that does not result in the receipt of a workers' compensation benefit is per se unreasonable; such a holding would clearly be outside the Commission's discretionary power (and contrary to *Curr*).

Perhaps the law allows the Commission to find that a particular legal service *as performed* had no value, but it may never find that a service may not even have its value *considered*. In other words, the Commission may not hold that the class consisting of all of the legal services rendered to a claimant prior to the issuance of a PPI rating are of no value or have no compensable value. And not surprisingly, an accurate reading of *Curr* supports this position: the Commission must "recognize [advocacy] efforts that do not generate monetary awards such as obtaining permission for medical care" while claimant is in the period of recovery and before a PPI rating is issued.

***E. COUNSEL IS AWARE OF NO LEGAL AUTHORITY THAT  
ALLOWS A TRIBUNAL TO ARBITRARILY FIND THAT AN  
ATTORNEY'S SERVICES ARE OF NO VALUE***

The facts set forth in the Affidavit of Andrew Marsh and its attached Exhibits demonstrate that Counsel provided extensive legal services to Claimant between the time Counsel was retained (October 5, 2005) and the time that the permanent partial impairment (PPI) rating was issued (December 19, 2006). For the Commission to choose to dishonor Counsel's contract with Claimant and disallow attorney fees on the PPI benefit obtained would be tantamount to a finding that the services of Counsel (rendered during the fourteen months before a PPI rating) were of *absolutely no value* to Claimant, and in effect that attorney should not have performed these services. It would also be tantamount to a finding that Counsel's exercise of professional judgment, in agreeing to accept a case and in providing legal advice and advocacy, was erroneous. It would be helpful to the plaintiff's bar if the Commission would publish a list of

what legal services it considers to be of no compensable value to a claimant.

Let us consider a few of the dozens of service transactions that Counsel rendered prior to the PPI rating:

- When Claimant signed up, she provided correspondence from Saltzer Medical Group that said the surety had denied payment on their worker's compensation medical bill; subsequent correspondence threatening collection on Saltzer and Mercy Medical Center; and correspondence from West Valley Medical Center stating they had made a credit rating report against her. Counsel reviewed and advised her on these issues. Was that service of no value to Claimant?
- When Claimant signed up, she provided correspondence from the surety that included a Change of Status dated six days earlier (9/30/05) regarding changing her temporary wage-loss benefits, as well as correspondence dated 8/5/05 that showed that nearly six months after the accident, the surety still had the case under investigation. Claimant does not speak English, has very little formal education, and is not sophisticated in American legal matters. Counsel reviewed and advised her on these issues. Was that service of no value to Claimant?
- On 10/24/05, Claimant's husband (who speaks some English) called and asked for legal advice on Claimant's concerns about not receiving wage-loss benefits and her perception that the employer and surety had stopped cooperating ever since she had exercised her right to retain legal counsel. Counsel advised her on these issues. Was that service of no value to Claimant?

- On 11/18/05, Counsel reviewed and responded to a Work Status Report from Dr. Sant, sending him a letter requesting a statement of work restrictions and an impairment rating. Was that service of no value to Claimant?
- On 11/23/05, Claimant called and asked for legal advice on Claimant's concerns about having been fired from her job and whether to seek new employment. Counsel advised her on these issues. Was that service of no value to Claimant? Was the Spanish translator that Counsel provided for that call also of no value to Claimant?

The above service events occurred during the *first seven weeks* of counsel's representation of Claimant. During this same period, Counsel also provided many other service events, such as requesting, receiving, and reviewing medical records; contacting and/or communicating with the surety, medical providers, creditors, and employer; and communicating with Claimant.

In the year that followed after these first seven weeks (i.e. from 11/23/05 to 12/19/06 when the PPI rating was obtained), Counsel engaged in dozens of other service transactions on Claimant's behalf. Were all of these services of no value to Claimant? **Does the amount of attorney fees that Counsel is seeking for the PPI benefits obtained (\$933.28) somehow exceed the value of the attorney time, attorney expertise, office staff time, and office overhead that Counsel expended on Claimant's behalf?**

Is there any scenario that the Commission can envision, or any amount of work that Counsel could have performed, that would be enough to warrant approval of an attorney fee on the PPI benefit, even if the Commission believes that Counsel was not "primarily or substantially" responsible for obtaining the PPI?

In sum, it would defy logic for the Commission to find that the fourteen months' of legal services provided to Claimant prior to a PPI rating were of no value and should not be

compensated.<sup>19, 20</sup>

***F. THE COMMISSION IS PROHIBITED FROM ENCOURAGING CLAIMANTS TO SEEK LEGAL ADVICE, AND THEN REFUSING TO ALLOW THE LEGAL ADVISORS TO BE PAID***

What is the Commission's stance on the issue of "compensat[ing] an attorney for acting solely as a counselor and . . . efforts that do not generate monetary awards such as obtaining permission for medical care or procuring an impairment rating. . . ." *Curr at 692*. The Commission's regulations and their application are at odds with the information provided on its own web site and publications, which are set forth in detail in the Affidavit of Andrew Marsh, section 6.2 *et seq.*

Over and over again, the Commission officially recommends that claimants seek legal advice; warns claimants of the complexity of the law; and officially urges claimants to talk to an attorney. Does the Commission intend for the public to assume that legal advice is free? Does the Commission intend for attorneys to assume that they are required to provide legal advice for free?<sup>21</sup> We assume not.

What, then, does the Commission intend by its recommendations? The only logical interpretation is that the Commission expects that a claimant will contract with an attorney for legal advice, and then pay the attorney pursuant to that contract. Under that interpretation, it must be presumed that the Commission intends to honor the parties' contract as required by constitutional law.

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<sup>19</sup> Of course, from December 2006 until a settlement agreement was reached in 2009, Counsel engaged in many dozens of other service transactions on Claimant's behalf.

<sup>20</sup> Because there is no known legal authority for a tribunal to take the position that it may make a blanket finding that an attorney's services have no value to a client, there is no need for Counsel to attempt to provide citation to contrary legal authority.

<sup>21</sup> Attorneys typically take an oath not to decline representation based on personal considerations or because a client cannot pay.

But the Commission does not stop with just *recommending* that a claimant seek legal advice, it goes into detail of *how and where to obtain it*. Apparently, *it is so important to the Commission* that injured workers consider getting legal advice **before** proceeding on their own that the Commission tells them exactly how to go about getting a lawyer. Moreover, the Commission also makes it clear that its staff cannot give legal advice.

Again, the Commission makes it clear that the only way for claimants to get legal advice is from an attorney. Let us apply all of this to the instant case. The Commission, via its website and pamphlets, tells people like Claimant Maria Gomez to seek legal advice. She does seek advice from Seiniger Law Offices. So far, it is clear that Maria did nothing wrong, because the Commission says that she is doing what it wants Claimants to do. Maria signs a contract with Seiniger Law Offices in which she agrees to pay them for their services, but rather than require an hourly fee,<sup>22</sup> Seiniger agrees to take a risk and accept a contingency fee on PPI benefits. Again, the Commission never says that the legal advice should be free, so neither Maria nor Seiniger Law Offices did anything wrong by signing this contract. Maria asks her attorney for advice and he provides it. Again, this is exactly what the Commission says it wants.

How is it, then, that nearly five years later, the Commission is prepared to find that in retrospect, Maria *should not* have sought advice, Seiniger *should not* have provided it, and therefore Seiniger should not be paid? What, exactly, did Maria or Seiniger do that was different than what the Commission specifically said they should do? In sum, public policy and fundamental fairness prohibits the Commission from encouraging claimants to seek legal advice, and then preventing their legal advisors from getting paid.

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<sup>22</sup> It is not even clear under IDAPA that a claimant would be permitted to agree to pay an hourly fee out of the benefits that she receives for an impairment rating.

### ***G. OTHER ISSUES***

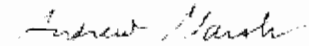
In regard to factual questions raised by the Commission at the Hearing for which Counsel Andrew Marsh did not have a present recollection, the 5% impairment rating for Claimant was issued by Cr. Nicola, not Dr. Sant. (Transcript of Hearing, p. 5-6) The "Change of Status" issued by the surety on September 30, 2005 (contained in Exhibit A of Affidavit of Andrew Marsh) provides that "Your TTD benefits end as of 9/25/05 as your employer advises you returned to work, light duty, partial hours. Your temporary partial disability (TPD) benefits begin on 9/26/05." (Transcript of Hearing, p. 6-7)

### **VIII. CONCLUSION**

Counsel is entitled to attorney fees as requested in the instant case.

Dated June 11, 2010.

SEINIGER LAW OFFICES, P.A.



Andrew Marsh  
Attorney for Claimant

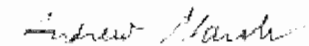
### **CERTIFICATE OF SERVICE**

I CERTIFY that on June 11, 2010, I caused a true and correct copy of the foregoing document to be served as follows:

Harmon Whittier & Day  
P.O. Box 6358  
Boise ID 83707-6358  
Fax: (800) 972-3213

☒ Fax

SEINIGER LAW OFFICES, P.A.



Andrew Marsh  
Attorney for Claimant



BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA GOMEZ,

Claimant,

v.

NAMPA LODGING INVESTORS, INC.,

Employer,

and

LIBERTY NORTHWEST INSURANCE  
CORPORATION,

Surety,

Defendants.

IC 2005-510285

ORDER ON  
ATTORNEY'S FEES

FILED

JUL 22 2010

INDUSTRIAL COMMISSION

This matter came before the Commission for hearing at the request of Seiniger Law Offices (hereinafter, Counsel) following an informal determination by Commission staff on the issue of attorney's fees payable to Counsel from the proceeds of a lump sum settlement. Hearing was held on April 12, 2010, at which time the Industrial Commission entertained argument from Counsel in support of Counsel's claim for attorney's fees. As well, the Commission received and considered the affidavits of Counsel and Claimant, and the various attachments thereto, offered in support of Counsel's claim for attorney's fees. Counsel requested and was granted a briefing schedule.

Per the February 11, 2010 Notice of Hearing, the following issue is before the Commission for determination:

"Attorney's entitlement to attorney's fees pursuant to IDAPA 17.02.08.033."

ORDER ON ATTORNEY'S FEES - 1

I.

FINDINGS OF FACT

1. At all times relevant hereto Claimant, Maria Gomez, was an employee of Nampa Lodging Investors, LLC, Employer herein.

2. Employer insured its workers' compensation obligations under a policy issued by Liberty Northwest (hereinafter, Surety).

3. On or about February 3, 2005, Claimant suffered an industrial accident arising out of and in the course of her employment with Employer. Surety accepted the claim and began paying benefits.

4. As a consequence of the subject accident, Claimant contended that she suffered an injury to her right knee. Claimant attempted conservative measures to alleviate her symptoms.

5. On or about October 5, 2005, Claimant executed a contingent fee agreement with Seiniger Law Offices, P.A., which provided, *inter alia*:

i) "2) For their representation of Client, Attorneys will be paid a fee which will be in lien upon the cause of action and will be equal to a portion of all amounts recovered by way of settlement, or award including attorney fees, and including sums recovered in satisfaction thereof from any third party. That portion will be as follows:

ii) Twenty-five percent (25%) of all amounts obtained for Client after execution of this agreement if the case is settled **before a hearing**. If Client is receiving temporary disability benefits at the time of the execution of this agreement, Attorney will not take a percentage of that benefit until such time as the surety discontinues or threatens to discontinue payment of said benefit; if Client has received an impairment rating which has been admitted and is being paid, Attorney will not take a percentage of the balance of the impairment rating unless it is later disputed.

iii) Thirty percent (30%) of such amounts **after a hearing** and the claim is resolved without the filing of an appeal by either party;

iv) Forty percent (40%) of such amounts if the claim is resolved **after an appeal** has been filed by either party;

a. **Attorney will take a percentage of any benefits obtained by Client with respect to permanent partial impairment if a rating is given after the parties execute this agreement.** In the event that there are attorney fees awarded against the defendant(s) by the commission Attorney shall be entitled to be paid those attorney fees or the percentage calculated above, whichever is greater.”

6. At some point prior to October 2, 2009, the parties agreed to resolve remaining extant issues by way of a Lump Sum Settlement Agreement (LSSA). Pursuant to the terms of the Agreement filed with the Industrial Commission on October 2, 2009, Claimant agreed to resolve all remaining issues for the additional sum of \$13,442.57 as consideration. Counsel had previously taken attorney’s fees of \$933.28 against a PPI award of \$3,733.13 prior to the Lump Sum Settlement Agreement. Counsel proposed taking an additional \$3,051.53 in attorney’s fees and costs of \$606.72 from the Lump Sum Settlement Agreement consideration. The net amount to Claimant would be \$8,547.88, with Claimant’s outstanding medical bill of \$1,236.44 being taken into account.

7. Counsel submitted a Form 1022, Report of Expenses and Statement of Claimant’s Counsel (hereinafter “Form 1022 Report”). In Counsel’s Form 1022 Report, Counsel stated, *inter alia*: “Before Counsel was retained, Defendants denied, discontinued, or disputed Claimant’s right to additional medical benefits and treatment, time loss benefits, impairment compensation, and disability beyond impairment. Subsequent to retaining Counsel, Claimant received additional medical treatment and other benefits.”

8. Counsel’s Form 1022 Report also contained an itemization of attorney’s fees and costs, and benefits to Claimant, as follows:

#### **Prior to Lump Sum Settlement (PPI)**

- a. **Benefits, paid prior to LSS, subjected to atty fees: \$3,733.13**
- b. **Attorney Fees, paid prior to LSS on the above: \$933.28**
- c. **Costs, incurred prior to LSS and reimbursed to atty: \$0.00**

#### **Lump Sum Settlement**

- d. **Benefits, subject to atty fees: \$1,236.44 (Meds), \$12,206.13 (LS Consideration, including PPD), Total, \$13,442.57**
- e. **Attorney fee, on the above: Waived on Meds, \$3051.53 on LS Consideration, including PPD, Total, \$3,051.53.**
- f. **Costs, reimbursable to atty: \$606.72**
- g. **Total atty fee and costs, from LSS: \$3,658.25**
- h. **Medical bills, to be paid from LSS: \$1236.44**
- i. **Net Lump Sum Amt. to Claimant: \$8,547.88**

9. In connection with Counsel's Form 1022 Report, Counsel submitted a Memorandum of Law in Support of Form 1022, filed with the Commission on October 23, 2009, along with the supporting affidavit of Andrew Marsh, also filed with the Commission on October 23, 2009.

10. On December 24, 2009, Commission staff sent Counsel an initial determination that the proposed Lump Sum Settlement Agreement was in the best interest of the parties, except for the portion of the requested fees related to permanent partial impairment (PPI) benefits. Commission staff notified Counsel that this was an initial determination, and that Counsel could request a hearing on this matter, in accordance with IDAPA 17.02.08.033.

11. On January 11, 2010, Counsel requested a hearing before the Commission. The Commission sent out a notice of hearing for April 12, 2009.

## II.

### COUNSEL'S CONTENTIONS

Counsel has reiterated many of the constitutional and policy arguments he made in the attorney fee hearing of the case *Kulm v. Mercy Medical Center*, IC 2006-012770 (filed May 20, 2010), to support his entitlement to attorney's fees. Ultimately, Counsel argues that the Commission's reasoning in *Kulm v. Mercy Medical Center*, *supra*, contradicts *Curr v. Curr*, 124 Idaho 686, 864 P.2d 132 (1993), and is unconstitutional. Counsel insists that this case is not a companion case to *Drotzman v. Coors Brewing Company*, IC 2006-006711 (filed June 8, 2010) or *Kulm v. Mercy Medical Center*, *Supra*. Further, Counsel argues that the Commission's regulations regarding attorney fees are inappropriate, and create many ethical problems for attorneys.

Counsel acknowledges that he cannot prove that he was "primarily or substantially" responsible for obtaining Claimant's PPI rating or the LSSA benefits, if the Commission applies a "but-for" test. Further, Counsel presents that he cannot prove that the benefits were "disputed" by Defendants. Counsel argues that the IDAPA regulations concerning attorneys' fees are vague. Counsel argues that he should receive compensation for his valuable contributions to Claimant's case, under his reasonable fee agreement with Claimant and controlling case law.

## III.

### CONSTITUTIONAL CHALLENGES

Counsel implies that an error in the dating of the *Curr v. Curr* decision in *Kulm v. Mercy Medical Center*, IC 2006-012770 (filed May 20, 2010), indicates that the Commission ignores

the legal significance of *Curr v. Curr*, or considers it overruled by *Rhodes v. Industrial Commission*, 125 Idaho 139, 868 P.2d 467 (1993). The Commission's *Curr v. Curr* decision that was appealed to the Supreme Court was issued in 1991, and treats the regulatory scheme, or lack thereof, that was in place at that time. The legislative history of the IDAPA regulations indicate the Commission and members of the workers' compensation bar were struggling with the issue of attorneys' fees in workers' compensation cases before the Court issued its decision in *Curr v. Curr*. By 1992, the Commission had promulgated regulations on attorneys' fees, which the *Rhodes* Court evaluated.

Contrary to the assertions made by Counsel, the Commission has not determined that *Curr v. Curr*, *supra*, has been overruled by *Rhodes*, *Mancilla* and/or *Johnson*. The Commission maintains that its adopted regulatory scheme hews to the direction given by the Supreme Court in *Curr v. Curr*, as evidenced by the Court's subsequent approval of those rules in *Rhodes*. While those cases were issued by the Court closely in time, *Curr* was issued based on the absence of duly enacted regulations or standards on attorneys' fees in workers' compensation cases, which was the case in 1991, whereas *Rhodes* involved a review of the regulations adopted by the Commission in response to *Curr*. As discussed in *Kulm*, the regulations issued after the Commission's decision in *Curr v. Curr*, are the predecessors of the current regulations.

#### IV.

#### **APPLICATION OF THE PROVISIONS OF IDAPA 17.02.08.033** **TO THE FACTS OF THIS CASE**

With an effective date of July 1, 1994, the Industrial Commission adopted the current IDAPA 17.02.08.033 *et seq*, pursuant to the provisions of Idaho Code § 72-508. The current regulation preserves the notion of a 25% cap on attorney's fees, contained in the former IDAPA 17.01.01.803.D (1992), but instead of applying that cap to "new money" the current regulation

allows attorneys to take a 25% fee on "available funds". Per IDAPA 17.02.08.033(a) "available funds" is defined as follows:

"Available funds" means a sum of money to which a charging lien may attach. It shall not include any compensation paid or not disputed to be owed prior to claimant's agreement to retain the attorney.

Therefore, available funds do not include (a) compensation paid to Claimant prior to the retention of Counsel or (b) compensation which is not disputed to be owed prior to the retention of Counsel.

The term "charging lien" is defined at IDAPA 17.02.08.033.01.c as follows:

"Charging lien" means a lien, against a claimant's right to any compensation under the Workers' Compensation laws, which may be asserted by an attorney who is able to demonstrate that:

- i. There are compensation benefits available for distribution on equitable principles;
- ii. The services of the attorney operated primarily or substantially to secure the fund out of which the attorney seeks to be paid;
- iii. It was agreed that counsel anticipated payment from compensation funds rather than from the client;
- iv. The claim is limited to costs, fees, or other disbursements incurred in the case through which the fund was raised; and
- v. There are equitable considerations that necessitate the recognition and application of the charging lien.

Although IDAPA 17.02.08.033.01.a, specifies that a charging lien may attach to "available funds," it is apparent from a review of the definition of "charging lien" that that term further constrains the available funds that may be subject to a claim of attorney's fees. Importantly, a charging lien can only attach to available funds where it is demonstrated that the services of the attorney operated "primarily or substantially" to secure the fund out of which the attorney seeks to be paid. (See, IDAPA 17.02.08.033.01.c.ii.) This is but one of five

requirements that must be satisfied before a charging lien can be said to exist against “available funds.” As important, is the fact that these requirements are not in the disjunctive. Per the language of the regulation, all of these requirements must be satisfied before a charging lien can be said to exist.

As discussed above, an attorney’s charging lien can only attach to available funds. However, a charging lien can only attach where attorney is able to demonstrate, *inter alia*, that:

- “ii. The services of the attorney operated primarily or substantially to secure the fund out of which the attorney seeks to be paid;”

In the recent case of *Kulm v. Mercy Medical Center, supra*, a case involving a claim for attorney’s fees brought by the same attorney involved in the instant matter, the Commission had occasion to consider what the Legislature intended in adopting the “primarily or substantially” language of the regulation. In that case, we concluded that in order to meet his burden of proving that his efforts were “primarily or substantially” responsible for securing the fund from which he hopes to be paid, Counsel bears the burden of proving, by a preponderance of the evidence, that he originally, or initially, took action that secured the fund, or that his efforts essentially, or in the main, were responsible for securing the fund, *i.e.* that his efforts were such that a reasonable person would conclude that he was responsible for securing the fund from which he hoped to be paid.

Turning to the facts of the instant matter, the record reflects that the insurance adjuster assigned to this claim requested of Dr. Nicola that he provide an impairment rating for Claimant. Dr. Nicola determined that Claimant was medically stable, and on December 19, 2006, issued a 5% PPI rating which he apportioned on a 50/50 basis between Claimant’s pre-existing conditions, and the subject accident. Surety paid the 2.5% PPI rating to Claimant and her attorney. Thereafter, Counsel took fees of \$933.28 from the Claimant’s 2.5% PPI rating. At



hearing, the Commission questioned Counsel about how the PPI rating was generated:

Commissioner Baskin: My information—and I may be wrong about this, Mr. Marsh—is that there was a December 11, 2006, letter that was written by the adjuster to Dr. Nicola and that on 12/19/06 Dr. Nicola, responding to that letter, generated a five percent impairment rating, half of which he attributed to the work-related incident and half of which he attributed to a preexisting condition and that, in turn, led the surety to pay a 2.5 percent PPI rating of \$3,733.13. Am I mistaken about that?

Mr. Marsh: No. You're correct.

Hr. Tr., p. 6.

The record is otherwise devoid of evidence that Counsel primarily or substantially secured Claimant's PPI rating from Dr. Nicola or how his actions influenced the PPI rating. As such, the Commission is unable to conclude that Counsel primarily or substantially secured the PPI rating, and he is not entitled to take fees on the PPI rating. The lump sum consideration in this case is \$13,442.57, which the Commission finds that Counsel is entitled to \$3,360.64 in fees.

#### **CONCLUSION OF LAW AND ORDER**

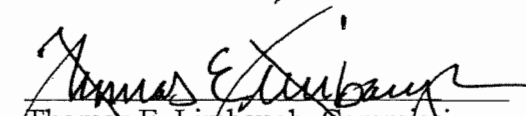
IT IS HEREBY ORDERED that Counsel has not shown that he is entitled to fees taken on the PPI benefits paid to Claimant.

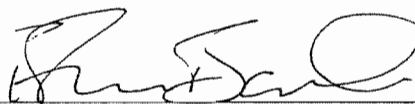
IT IS SO ORDERED.

DATED this 22<sup>nd</sup> day of July, 2010.

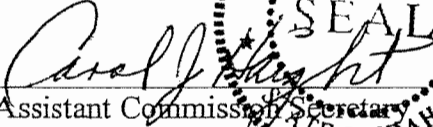

INDUSTRIAL COMMISSION

  
R.D. Maynard, Chairman

  
Thomas E. Limbaugh, Commissioner

  
Thomas P. Baskin, Commissioner

ATTEST:

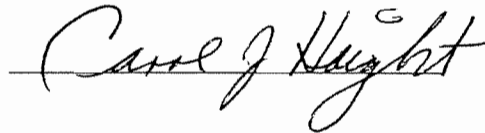
  
Assistant Commissioner/Secretary  


**CERTIFICATE OF SERVICE**

I hereby certify that on the 22<sup>nd</sup> day of July, 2010 a true and correct copy of **Order on Attorney's Fees** was served by regular United States Mail upon each of the following persons:

WM BRECK SEINIGER  
942 W MYRTLE STREET  
BOISE ID 83702

cs-m/cjh



ORIGINAL

Wm. Breck Seiniger, Jr. (ISB # 2387)  
Andrew C. Marsh (ISB # 6588)  
SEINIGER LAW OFFICES, P.A.  
942 W. Myrtle Street  
Boise, Idaho 83702  
Phone: (208) 345-1000  
Fax: (208) 345-4700  
Attorneys for Claimant  
Attorneys for Seiniger Law Offices, P.A., Real Party in Interest

2010 AUG 30 A 10:02

RECEIVED  
INDUSTRIAL COMMISSION

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

**Maria Gomez,  
Claimant,**

**vs.**

**Nampa Lodging Investors LLC,  
Employer,**

**and**

**Liberty Northwest,**

**Surety,  
Defendants.**

**I.C. No. 05-510285**

**MOTION FOR *EX PARTE* ORDER  
CONSOLIDATING CASES FOR APPEAL**

COMES NOW SEINIGER LAW OFFICES, P.A., the Real Party in Interest in the forthcoming appeals on the issue, *inter alia*, of the constitutionality of IDAPA 17.02.08.033.01.c.ii, and hereby requests the Commission to consolidate the following cases for purposes of said appeals:

1. *Laurel Kulm vs. Mercy Medical Center and Industrial Claims Management*, I.C. No. 06-012770.
2. *Maria Gomez vs. Nampa Lodging Investors LLC and Liberty Northwest Ins. Corp.*, I.C. No. 05-510285.

605

3. *Cody Drotzman vs. Coors Brewing Company*, I.C. No. 06-006711.

The grounds for this motion are that all of the above cases have been resolved by way of a lump sum settlement approved by the Idaho Industrial Commission; the only issue to be presented for review by the Idaho Supreme Court is the constitutionality of IDAPA 17.02.08.033.01.c.ii generally and as applied; and the consolidation of these cases will result in administrative economy both at the level of the Idaho Industrial Commission and the Idaho Supreme Court in that it will prevent unnecessary multiple briefing and avoid taxing the Idaho Supreme Court with having to hear and decide multiple appeals involving the same issues.

Seiniger Law Offices, P.A. does not request oral argument on this motion. Seiniger Law Offices, P.A. requests that this motion be entered on an *ex parte* basis, since the Defendants in the above cases are not expected to have a stake in the appeal of said cases, and because it is highly likely that the Idaho Supreme Court would consolidate these cases in any event (after unnecessary time and expense has been incurred by Seiniger Law Offices, P.A. and the Idaho Industrial Commission). See, *Curr v. Curr*, 124 Idaho 686, 864 P.2d 132 (1993).

Dated August 30, 2010.

SEINIGER LAW OFFICES, P.A.



---

Andrew Marsh  
Attorney for Claimant  
Attorneys for Seiniger Law Offices, P.A., Real Party in Interest

## CERTIFICATE OF SERVICE

I CERTIFY that on August 30, 2010, I caused a true and correct copy of the foregoing document to be served as follows:

Alan Hull  
Anderson Julian & Hull  
250 South 5<sup>th</sup>, Ste. 700  
Boise ID 83707-7426  
Fax: (208) 344-5510

Kent W. Day  
Harmon & Day  
6213 N. Cloverdale Road, Suite 150  
P.O. Box 6358  
Boise ID 83707-6358  
Fax: (800) 972-3213

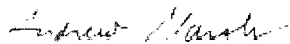
Scott Wigle  
Bowen & Bailey  
1311 W. Jefferson  
Boise ID 83701-1007  
Fax: (208) 344-9670

☒ Fax

Cody Drotzman, Claimant  
4547 N. Anchor Way  
Boise, ID 83703

☒ Mail

SEINIGER LAW OFFICES, P.A.



---

Andrew Marsh

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA GOMEZ, )  
)  
Claimant, )  
)  
v. )  
)  
NAMPA LODGING INVESTORS LLC, )  
)  
Employer, )  
)  
and )  
)  
LIBERTY NORTHWEST, )  
)  
Surety, )  
)  
Defendants. )  
\_\_\_\_\_ )

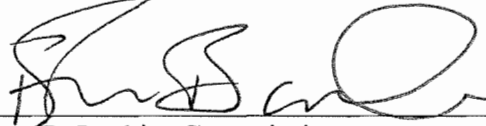
**FILED**  
**AUG 30 2010**  
**INDUSTRIAL COMMISSION**  
**IC 2005-510285**  
**NOTICE OF**  
**INTENT TO RULE**  
**ON MOTION**  
**FOR EX PARTE ORDER**  
**CONSOLIDATING CASES**  
**FOR APPEAL**

On August 30, 2010, Claimant filed a Motion for *Ex Parte* Order Consolidating Cases for Appeal.

Pursuant to J.R.P. Rule 3(E), the undersigned Commissioner hereby gives notice to all parties by facsimile transmission that said Commissioner intends to rule on Claimant's motion prior to expiration of the 14-day response time provided by this Rule. Therefore, any party that so desires to respond to motion is hereby directed to file a response on or before 5:00 p.m. on 9-1-10.

DATED this 30<sup>th</sup> day of August, 2010.

INDUSTRIAL COMMISSION

  
\_\_\_\_\_  
Thomas P. Baskin, Commissioner

**NOTICE OF INTENT TO RULE ON MOTION FOR EX PARTE ORDER  
CONSOLIDATING CASES FOR APPEAL - 1**

108

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30<sup>th</sup> day of August, 2010, a true and correct copy of **NOTICE OF INTENT TO RULE ON MOTION FOR EX PARTE ORDER CONSOLIDATING CASES FOR APPEAL** was served by *facsimile transmission* upon each of the following:

ALAN HULL                      *FAX: (208) 344-5510*

KENT W. DAY                      *FAX: (800) 972-3213*

SCOTT WIGLE                      *FAX: (208) 344-9670*

ANDREW C. MARSH                      *FAX: (208) 345-4700*

and by regular United States Mail upon the following:

CODY DROTZMAN  
4547 N ANCHOR WAY  
BOISE ID 83703

Jing Espinoza

ge

ORIGINAL

Wm. Breck Seiniger, Jr. (ISB # 2387)

Andrew C. Marsh (ISB # 6588)

SEINIGER LAW OFFICES, P.A.

942 W. Myrtle Street

Boise, Idaho 83702

Phone: (208) 345-1000

Fax: (208) 345-4700

Attorneys for Claimant

Attorneys for Seiniger Law Offices, P.A., Real Party in Interest

2010 AUG 31 A 10:36

RECEIVED  
INDUSTRIAL COMMISSION

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

**Maria Gomez,  
Claimant,**

**vs.**

**Nampa Lodging Investors LLC,  
Employer,**

**and**

**Liberty Northwest,**

**Surety,  
Defendants.**

**I.C. No. 05-510285**

**AMENDED MOTION FOR *EX PARTE*  
ORDER CONSOLIDATING CASES FOR  
APPEAL**

COMES NOW SEINIGER LAW OFFICES, P.A., the Real Party in Interest in the forthcoming appeals on the issue, *inter alia*, of the constitutionality of IDAPA 17.02.08.033.01.c.ii, and hereby requests the Commission to consolidate the following cases for purposes of said appeals:

1. *Laurel Kulm vs. Mercy Medical Center and Industrial Claims Management*, I.C. No. 06-012770.
2. *Maria Gomez vs. Nampa Lodging Investors LLC and Liberty Northwest Ins. Corp.*, I.C. No. 05-510285.



3. *Cody Drotzman vs. Coors Brewing Company*, I.C. No. 06-006711.

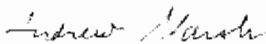
4. *Tim Stienmetz vs. G2B Co., Inc. and Idaho State Insurance Fund*, I.C. No. 08-002191.

The grounds for this motion are that all of the above cases have been resolved by way of a lump sum settlement approved by the Idaho Industrial Commission; the only issue to be presented for review by the Idaho Supreme Court is the constitutionality of IDAPA 17.02.08.033.01.c.ii generally and as applied; and the consolidation of these cases will result in administrative economy both at the level of the Idaho Industrial Commission and the Idaho Supreme Court in that it will prevent unnecessary multiple briefing and avoid taxing the Idaho Supreme Court with having to hear and decide multiple appeals involving the same issues.

Seiniger Law Offices, P.A. does not request oral argument on this motion. Seiniger Law Offices, P.A. requests that this motion be entered on an *ex parte* basis, since the Defendants in the above cases are not expected to have a stake in the appeal of said cases, and because it is highly likely that the Idaho Supreme Court would consolidate these cases in any event (after unnecessary time and expense has been incurred by Seiniger Law Offices, P.A. and the Idaho Industrial Commission). See, *Curr v. Curr*, 124 Idaho 686, 864 P.2d 132 (1993).

Dated August 31, 2010.

SEINIGER LAW OFFICES, P.A.



---

Andrew Marsh  
Attorney for Claimant  
Attorneys for Seiniger Law Offices, P.A., Real Party in Interest

## CERTIFICATE OF SERVICE

I CERTIFY that on August 31, 2010, I caused a true and correct copy of the foregoing document to be served as follows:

Alan Hull  
Anderson Julian & Hull  
250 South 5<sup>th</sup>, Ste. 700  
Boise ID 83707-7426  
Fax: (208) 344-5510

Kent W. Day  
Harmon & Day  
6213 N. Cloverdale Road, Suite 150  
P.O. Box 6358  
Boise ID 83707-6358  
Fax: (800) 972-3213

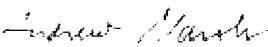
Scott Wigle  
Bowen & Bailey  
1311 W. Jefferson  
Boise ID 83701-1007  
Fax: (208) 344-9670

☒ Fax

Cody Drotzman, Claimant  
4547 N. Anchor Way  
Boise, ID 83703

☒ Mail

SEINIGER LAW OFFICES, P.A.



---

Andrew Marsh

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA GOMEZ, )  
Claimant, )  
v. )

NAMPA LODGING INVESTORS, LLC., )  
Employer, )  
and )

LIBERTY NORTHWEST INSURANCE )  
CORPORATION, )  
Surety, )  
Defendants. )

LAUREL KULM, )  
Claimant, )  
v. )

MERCY MEDICAL CENTER, )  
Employer, )  
and )

INDUSTRIAL CLAIMS MANAGEMENT, )  
Surety, )  
Defendants. )

CODY DROTZMAN, )  
Claimant, )  
v. )

COORS BREWING CO., )  
Employer, )  
and )

ZURICH AMERICAN INSURANCE CO., )  
Surety, )  
Defendants. )

TIM STIENMETZ, )  
Claimant, )  
v. )

G2B CO., INC., )  
Employer, )  
and )

IDAHO STATE INSURANCE FUND, )  
Surety, )  
Defendants. )

IC 2005-510285  
IC 2006-012770  
IC 2006-006711  
IC 2008-002191

ORDER TO CONSOLIDATE

FILED  
SEP - 2 2010  
INDUSTRIAL COMMISSION

Seiniger Law Offices, P.A., a party in interest in forthcoming appeals in the above-captioned cases, has filed a motion to consolidate the above-captioned cases for purposes of appeal. The primary issue on appeal appears to be the constitutionality of IDAPA 17.02.08.033.01.c.ii generally and as applied.

Because consolidating the cases would promote administrative and judicial economy, we find good cause to GRANT the motion.

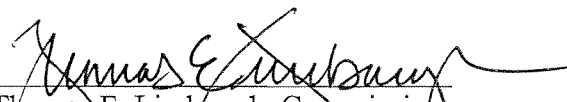
IT IS HEREBY ORDERED That the following cases are consolidated for purposes of appeal:

1. *Gomez v. Nampa Lodging Investors, LLC*, I.C. 2005-510285;
2. *Kulm v. Mercy Medical Center*, I.C. 2006-012770;
3. *Drotzman v. Coors Brewing Co.*, I.C. 2006-006711; and
4. *Stienmetz v. G2B Co., Inc.*, I.C. 2008-002191.

DATED this 2<sup>nd</sup> day of September, 2010.

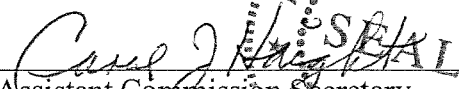
INDUSTRIAL COMMISSION


  
R.D. Maynard, Chairman

  
Thomas E. Limbaugh, Commissioner

  
Thomas P. Baskin, Commissioner

ATTEST:

  
Assistant Commission Secretary



## CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of September, 2010, a true and correct copy of **Order To Consolidate** was served by regular United States Mail upon each of the following persons:

WM BRECK SEINIGER JR  
942 W MYRTLE ST  
BOISE ID 83702

Faxed (208) 345-4700

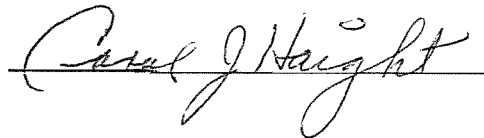
ALAN HULL  
PO BOX 7426  
BOISE ID 83707-7426

KENT DAY  
PO BOX 6358  
BOISE ID 83707-6358

SCOTT WIGLE  
PO BOX 1007  
BOISE ID 83701-1007

CODY DROTZMAN  
4547 N ANCHOR WAY  
BOISE ID 83703

eb/cjh

A handwritten signature in cursive script, reading "Carol J. Haight", is written over a horizontal line.

ORIGINAL

Wm. Breck Seiniger, Jr. (ISB # 2387)

Andrew C. Marsh (ISB # 6588)

SEINIGER LAW OFFICES, P.A.

942 W. Myrtle Street

Boise, Idaho 83702

Phone: (208) 345-1000

Fax: (208) 345-4700

Attorneys for Claimant, Appellant/Real Party in Interest

Email: Andrew@SeinigerLaw.com, WBS@SeinigerLaw.com

2010 SEP -21 P 4:04  
RECEIVED  
INDUSTRIAL COMMISSION

IN THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

**Maria Gomez, Claimant,**

and

**Seiniger Law Offices, P.A.,**

*Appellant/Real Party in Interest*

VS.

**Nampa Lodging Investors LLC, Employer,**  
and **Liberty Northwest Ins. Corp., Surety,**

*Defendants/Respondents*

**I.C. No. 05-510285**

**I.C. No. 06-012770**

**I.C. No. 06-006711**

**I.C. No. 08-002191**

**NOTICE OF APPEAL**  
**(Consolidated Cases)**

**Laurel Kulm, Claimant,**

and

**Seiniger Law Offices, P.A.,**

*Appellant/Real Party in Interest*

VS.

**Mercy Medical Center, Employer, and**  
**Industrial Claims Management, Surety,**

*Defendants/Respondents*

**Cody Drotzman, Claimant,**

and

**Seiniger Law Offices, P.A.,**

*Appellant/Real Party in Interest*

VS.

**Coors Brewing Company, Employer, and**  
**Coors Brewing Company, Self-Insured**

*Defendants/Respondents*

**Seiniger Law Offices, P.A.,**  
*Appellant/Real Party in Interest*

VS.  
**G2B Co., Inc., Employer, and Idaho State  
Insurance Fund, Surety,**

*Defendants/Respondents*

TO:

1. **Nampa Lodging Investors LLC, Employer, and Liberty Northwest Ins. Corp. Surety;**
2. **Mercy Medical Center, Employer, and Industrial Claims Management, Surety;**
3. **Coors Brewing Company, Employer, and Coors Brewing Company, Self Insured,**
4. **G2B Co., Inc., Employer, and Idaho State Insurance Fund, Surety;**
5. All Respondents attorneys, and the Clerk of the Idaho Industrial Commission

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, and Seiniger Law Offices, P.A. as the Real Party in Interest, appeals to the Idaho Supreme Court from:
2. The *Order on Attorney's Fees* filed in the Idaho Industrial Commission on or about July 22, 2010 in Gomez, *Claimant*, vs. Nampa Lodging Investors LLC, *Employer, and Liberty Northwest Ins. Corp. Surety* IC #2005-510285 and all other decisions and orders denying Seiniger Law Offices, P.A. as the Real Party in Interest any claimed attorneys fees entered in the above entitled action, the Honorable Idaho Industrial Commission presiding.
3. The *Findings of Fact and Conclusions of Law Relating to Counsel's Request for Approval of Attorneys Fees* filed in the Idaho Industrial Commission on or about May 20, 2010 in Kulm, *Claimant*, vs. Mercy Medical Center, *Employer, and Industrial Claims Management, Surety*, IC #2006-012770; the *Order on Claimant's Motion for Reconsideration*, filed July 26, 2010, and all other decisions and orders denying Seiniger

Law Offices, P.A. as the Real Party in Interest any claimed attorneys fees entered in the above entitled action, the Honorable Idaho Industrial Commission presiding.

4. The *Order on Attorney's Fees* filed on or about June 8, 2010 in Drotzman, *Claimant*, vs. Coors Brewing Company, *Employer*, and Coors Brewing Company, *Self-Insured Surety*, IC #2006-006711, and all other decisions and orders denying Seiniger Law Offices, P.A. as the Real Party in Interest any claimed attorneys fees entered in the above entitled action, the Honorable Idaho Industrial Commission presiding.
5. The *Order on Attorney's Fees* filed on or about August 31, 2010 in Steinmetz, *Claimant*, vs. G2B Co., Inc., *Employer*, and Idaho State Insurance Fund, *Surety*, IC #2008-002191, and all other decisions and orders denying Seiniger Law Offices, P.A. as the Real Party in Interest any claimed attorneys fees entered in the above entitled action, the Honorable Idaho Industrial Commission presiding.
6. The parties have a right to appeal to the Idaho Supreme Court, and the orders described above are appealable orders under and pursuant to Rule 11(d), I.A.R. relating to orders of the Idaho Industrial Commission.
7. A preliminary statement of the issues on appeal which the Appellant intends to assert in the appeal:
  - a. What constitutional rights under the Idaho State Constitution and/or the United States Constitution does a claimant have in a worker's compensation matter to retain counsel of his or her choice, for all stages of the proceeding or processing of the claim, and to enter into a contract with an attorney which provides for payment for all services to be rendered?
  - i. Is it constitutional under the Idaho State Constitution and/or the United States Constitution for the Idaho Industrial Commission to limit the compensation that a claimant in a Worker's Compensation case can agree to and pay to an attorney for representation to "disputed" matters in which the attorney is "primarily or substantially" responsible for creating the right to and/or payment of benefits (known under IDAPA



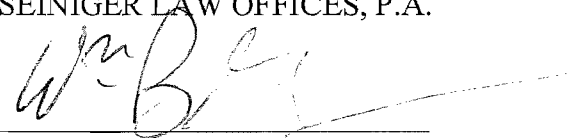
17.02.08.033.01.c.ii as “available funds”) pursuant to IDAPA 17.02.08.033.01.c.ii (commonly know as the charging lien “primarily or substantially” rule) or other any other statute, rule or regulation?

- ii. Does a Claimant in a Workers’ Compensation matter have the same constitutional right to hire and pay the attorney of his or her choice as the employer and its insurance company?
  - iii. In Worker’s Compensation cases, does limiting the compensation of claimants’ attorneys to disputed matters, but not so limiting the compensation that can be paid to defendants’ attorneys, violate the Constitutions of the State of Idaho and/or the United States?
- b. Does an attorney representing a claimant in a worker’s compensation case have a constitutional right under the Idaho State Constitution or the United States Constitution to enter into and enforce an attorney’s fee agreement that provides for compensation for all services rendered at all stages of the proceeding or processing of the claim?
- i. Is it constitutional under the Idaho State Constitution or the United States Constitution for the Idaho Industrial Commission to limit the compensation that an attorney can charge a client in a Worker’s Compensation case to “disputed” matters in which the attorney is “primarily or substantially” responsible for creating the right to and/or payment of benefits (known under IDAPA 17.02.08.033.01.c.ii as “available funds”) pursuant to IDAPA 17.02.08.033.01.c.ii (commonly know as the charging lien “primarily or substantially” rule) or other any other statute, rule or regulation?
  - ii. Can the Idaho Industrial Commission, pursuant to IDAPA 17.02.08.033.01.c.ii (commonly know as the charging lien “primarily or substantially” rule) or otherwise, limit the compensation that an attorney can charge a client to “disputed” matters in which the attorney is “primarily or substantially” responsible for creating the right to and/or payment of benefits (known under IDAPA 17.02.08.033.01.c.ii as “available funds”)?
- c. Can the Idaho Industrial Commission constitutionally enforce a regulation that forces an attorney into a position where there is at least an appearance that he is violating one or more of the Idaho Rules of Professional Responsibility by limiting his representation to only “disputed” matters where he is attorney of record in a Worker’s Compensation case?
- i. Is IDAPA 17.02.08.033.01.c.ii (commonly know as the charging lien “primarily or substantially” rule) constitutional under the Constitutions of the State of Idaho and/or the United States, generally and as applied?

- ii. Is Seiniger Law Offices entitled to be paid a contingent fee according to the fee agreement entered into with the Claimant under the circumstances of this case as a matter of constitutional law?
  - d. Was the Fee Agreement entered into between Seiniger Law Offices, P.A. and the Claimant reasonable when viewed at the time that it was entered into?
  - e. All other issues raised by Appellant/Real Party in Interest in the motions, arguments, and briefings related to said appealable orders, all as of appear in the record in the Idaho Industrial Commission.
8. No order has been entered sealing all or any portion of the record.
9. Record: A reporter's transcript is not requested. (Transcripts are included as a matter of course in the record of the Idaho Industrial Commission.)
10. The appellant requests the following documents to be included in the Commission's record in addition to those automatically included under Rule 28, I.A.R: No additional documents.
11. I certify:
- a. That the estimated fee for preparation of the agency's record has been paid.
  - b. That the appellate filing fee has been paid.
  - c. That service has been made upon all parties required to be served pursuant to Rule 20.

Dated September 2, 2010.

SEINIGER LAW OFFICES, P.A.

  
Wm. Breck Seiniger, Jr.  
Attorneys for Seiniger Law Offices, P.A.,  
Appellant/Real Party in Interest

## CERTIFICATE OF SERVICE

I CERTIFY that on September 2, 2010, I caused a true and correct copy of the foregoing document to be served as follows:


Alan Hull  
Anderson Julian & Hull  
250 South 5<sup>th</sup>, Ste. 700  
Boise ID 83707-7426  
Fax: (208) 344-5510  
☒ Fax

Kent W. Day  
Harmon & Day  
6213 N. Cloverdale Road, Suite 150  
P.O. Box 6358  
Boise, ID 83707-6358  
Fax: (800) 972-3213  
☒ Fax

Scott Wigle  
Bowen & Bailey  
1311 W. Jefferson  
Boise ID 83701-1007  
Fax: (208) 344-9670  
☒ Fax

Cody Drotzman, Claimant  
4547 N. Anchor Way  
Boise, ID 83703  
☒ Regular mail

SEINIGER LAW OFFICES, P.A.

  
\_\_\_\_\_  
Wm. Breck Seiniger, Jr.

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

MARIA GOMEZ, Claimant, )  
and )  
SEINIGER LAW OFFICES, P.A., )  
Appellant/Real Party in Interest, )  
v. )

IC 2005-510285

NAMPA LODGING INVESTORS, LLC, )  
Employer, and LIBERTY NORTHWEST )  
INS. CORPORATION, Surety, )  
Defendants/Respondents. )

LAUREL KULM, Claimant, )  
and )  
SEINIGER LAW OFFICES, P.A., )  
Appellant/Real Party in Interest, )  
v. )

IC 2006-012770

MERCY MEDICAL CENTER, Employer, )  
and INDUSTRIAL CLAIMS )  
MANAGEMENT, Surety, )  
Defendants/Respondents. )

CODY DROTZMAN, Claimant, )  
and )  
SEINIGER LAW OFFICES, P.A., )  
Appellant/Real Party in Interest, )  
v. )

IC 2006-006711

COORS BREWING COMPANY, )  
Employer, and COORS BREWING )  
COMPANY, Self-Insured, )  
Defendants/Respondents. )

SEINIGER LAW OFFICES, P.A., )  
Appellant/Real Party in Interest, )  
v. )

IC 2008-002191

SUPREME COURT NO.

G2B CO., INC., Employer, and IDAHO )  
STATE INSURANCE FUND, Surety, )  
Defendants/Respondents. )

CERTIFICATE OF APPEAL

Appeal From: Industrial Commission,  
R.D. Maynard, Chairman presiding

Case Number: IC 2005-510285  
IC 2006-012770  
IC 2006-006711  
IC 2008-002191

Order Appealed from: Order on Attorney's Fees (Gomez),  
filed July 22, 2010 and  
Findings of Fact and Conclusions of Law  
Relating to Counsel's Request for Approval  
of Attorneys Fees (Kulm), filed May 20, 2010  
and Order on Claimant's Motion for  
Reconsideration (Kulm), filed July 26, 2010,  
and Order on Attorney's Fees (Drotzman),  
filed June 8, 2010 and Order on Attorney's Fees  
(Steinmetz), filed August 31, 2010.

Attorney for Appellant: William Breck Seiniger, Jr.  
Andrew C. Marsh  
Seiniger Law Offices, P.A.  
924 W. Myrtle Street  
Boise, ID 83702

Attorney for Respondents: Kent W. Day (Nampa Lodging Investors)  
Harmon and Day  
PO Box 6358  
Boise, ID 83707-6358

Alan K. Hull (Mercy Medical Center)  
Anderson Julian & Hull  
PO Box 7426  
Boise, ID 83707-7426

Cody Drotzman  
*Pro Se* Claimant  
4547 N. Anchor Way  
Boise, ID 83703

Scott Wigle (Coors Brewing Co.)  
Bowen and Bailey  
PO Box 1007  
Boise, ID 83701-1007

Appealed By:

Claimant's Attorney of Record  
Wm. Breck Seiniger, Jr./Appellant

Appealed Against:

Defendants/Respondents

Notice of Appeal Filed:

September 2, 2010

Appellate Fee Paid:

\$86.00 to Supreme Court and  
\$100.00 to Industrial Commission  
Checks were received.

Name of Reporter:

Transcript Requested:

Standard transcript has not been requested.

Dated:

September 8, 2010

*Carol J. Haight*  
Assistant Commission Secretary



## CERTIFICATION

I, Carol J. Haight, the undersigned Assistant Commission Secretary of the Industrial Commission of the State of Idaho, hereby CERTIFY that the foregoing is a true and correct photocopy of the Notice of Appeal, filed Sept. 2, 2010; Order on Attorney's Fees, filed July 22, 2010, Findings of Fact and Conclusions of Law Relating to Counsel's Request for Approval of Attorneys Fees, filed May 20, 2010, Order on Claimant's Motion for Reconsideration, filed July 26, 2010, Order on Attorney's Fees, filed June 8, 2010; and Order on Attorney's Fees, filed August 31, 2010, and the whole thereof, in IC # 2005-510285 for Maria Gomez, IC # 2006-012770 for Laurel Kulm, 2006-005711 for Cody Drotzman, and 2008-002191 for Tim Steinmetz.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 8<sup>th</sup> day of September, 2010.

Carol J. Haight  
Assistant Commission Secretary



CERTIFICATION

1-25

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

SEINIGER LAW OFFICES, P.A., )  
 )  
 Real Party in Interest/Appellant, )  
 )  
 and )  
 )  
 MARIA GOMEZ, )  
 )  
 Claimant, )  
 )  
 v. )  
 )  
 NAMPA LODGING INVESTORS, LLC, )  
 Employer, and LIBERTY NORTHWEST )  
 INS. CORPORATION, Surety, )  
 Defendants/Respondents. )  
 \_\_\_\_\_ )  
 SEINIGER LAW OFFICES, P.A., )  
 )  
 Real Party in Interest/ Appellant, )  
 )  
 and )  
 )  
 LAUREL KULM, Claimant, )  
 v. )  
 )  
 MERCY MEDICAL CENTER, Employer, )  
 and INDUSTRIAL CLAIMS )  
 MANAGEMENT, Surety, )  
 Defendants/Respondents. )  
 \_\_\_\_\_ )  
 SEINIGER LAW OFFICES, P.A., )  
 )  
 Real Party in Interest/Appellant, )  
 )  
 and )  
 )  
 CODY DROTZMAN, )  
 )  
 Claimant, )  
 )  
 v. )  
 )  
 COORS BREWING COMPANY, )  
 Employer, and COORS BREWING )  
 COMPANY, Self-Insured, )  
 Defendants/Respondents. )

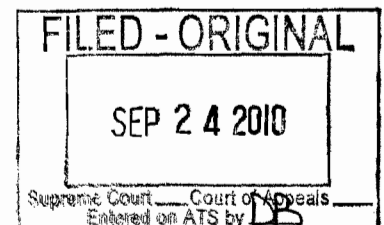
IC 2005-510285

Supreme Court No. 38037

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 COURT OF APPEALS  
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IC 2006-012770

IC 2006-006711





SEINIGER LAW OFFICES, P.A.,

Real Party in Interest/Appellant,

and

TIM STIENMETZ,

Claimant,

v.

G2B CO., INC., Employer, and IDAHO  
STATE INSURANCE FUND, Surety,  
Defendants/Respondents.

IC 2008-002191

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COURT

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SUPREME COURT NO. 38037

CERTIFICATE OF APPEAL

Appeal From:

Industrial Commission,  
R.D. Maynard, Chairman presiding

Case Number:

IC 2005-510285  
IC 2006-012770  
IC 2006-006711  
IC 2008-002191

Order Appealed from:

Order on Attorney's Fees (Gomez),  
filed July 22, 2010 and  
Findings of Fact and Conclusions of Law  
Relating to Counsel's Request for Approval  
of Attorneys Fees (Kulm), filed May 20, 2010  
and Order on Claimant's Motion for  
Reconsideration (Kulm), filed July 26, 2010,  
and Order on Attorney's Fees (Drotzman),  
filed June 8, 2010 and Order on Attorney's Fees  
(Stienmetz), filed August 31, 2010.

Attorney for Appellant:

William Breck Seiniger, Jr.  
Andrew C. Marsh  
Seiniger Law Offices, P.A.  
924 W. Myrtle Street  
Boise, ID 83702

Attorneys for Respondents:

Kent W. Day (Nampa Lodging Investors)  
Harmon and Day  
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Anderson Julian & Hull  
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Boise, ID 83707-7426

Scott Wigle (Coors Brewing Co.)  
Bowen and Bailey  
PO Box 1007  
Boise, ID 83701-1007

Ronald D. Coston (G2B Co., Inc.)  
Idaho State Insurance Fund  
**State House Mail**  
PO Box 83720  
Boise, ID 83720-0044

Appealed By:

Claimants' Attorney of Record  
Wm. Breck Seiniger, Jr./Appellant

Appealed Against:

Defendants/Respondents

Notice of Appeal Filed:

September 2, 2010

Appellate Fee Paid:

\$86.00 to Supreme Court and  
\$100.00 to Industrial Commission  
Checks were received.

Name of Reporter:

Transcript Requested:

Standard transcript has not been requested.

Dated:

September 23, 2010

  
Assistant Commission Secretary



ORIGINAL

Wm. Breck Seiniger, Jr. (ISB # 2387)  
Andrew C. Marsh (ISB # 6588)  
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942 W. Myrtle Street  
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Email: Andrew@SeinigerLaw.com, WBS@SeinigerLaw.com

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INDUSTRIAL COMMISSION

IN THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

**Maria Gomez, Claimant,**  
and  
**Seiniger Law Offices, P.A.,**

*Appellant/Real Party in Interest*

vs.

**Nampa Lodging Investors LLC, Employer,**  
**and Liberty Northwest Ins. Corp., Surety,**  
*Defendants/Respondents*

**I.C. No. 05-510285**  
**I.C. No. 06-012770**  
**I.C. No. 06-006711**  
**I.C. No. 08-002191**

**AMENDED NOTICE OF APPEAL**  
**(Consolidated Cases)**

**Laurel Kulm, Claimant,**  
and  
**Seiniger Law Offices, P.A.,**

*Appellant/Real Party in Interest*

vs.

**Mercy Medical Center, Employer, and**  
**Industrial Claims Management, Surety,**  
*Defendants/Respondents*

**Cody Drotzman, Claimant,**  
and  
**Seiniger Law Offices, P.A.,**

*Appellant/Real Party in Interest*

vs.

**Coors Brewing Company, Employer, and**  
**Coors Brewing Company, Self-Insured**  
*Defendants/Respondents*

**Tim Stienmetz, Claimant,**  
and  
**Seiniger Law Offices, P.A.,**

*Appellant/Real Party in Interest*  
VS.  
**G2B Co., Inc., Employer, and Idaho State  
Insurance Fund, Surety,**

*Defendants/Respondents*

TO:

1. **Nampa Lodging Investors LLC, Employer, and Liberty Northwest Ins. Corp. Surety;**
2. **Mercy Medical Center, Employer, and Industrial Claims Management, Surety;**
3. **G2B Co., Inc., Employer, and Idaho State Insurance Fund, Surety;**
4. All Respondents attorneys, and the Clerk of the Idaho Industrial Commission

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, and Seiniger Law Offices, P.A. as the Real Party in Interest, appeals to the Idaho Supreme Court from:
2. The *Order on Attorney's Fees* filed in the Idaho Industrial Commission on or about July 22, 2010 in Gomez, *Claimant*, vs. Nampa Lodging Investors LLC, *Employer, and Liberty Northwest Ins. Corp. Surety* IC #2005-510285 and all other decisions and orders denying Seiniger Law Offices, P.A. as the Real Party in Interest any claimed attorneys fees entered in the above entitled action, the Honorable Idaho Industrial Commission presiding.
3. The *Findings of Fact and Conclusions of Law Relating to Counsel's Request for Approval of Attorneys Fees* filed in the Idaho Industrial Commission on or about May 20, 2010 in Kulm, *Claimant*, vs. Mercy Medical Center, *Employer, and Industrial Claims Management, Surety*, IC #2006-012770; the *Order on Claimant's Motion for Reconsideration*, filed July 26, 2010, and all other decisions and orders denying Seiniger

Law Offices, P.A. as the Real Party in Interest any claimed attorneys fees entered in the above entitled action, the Honorable Idaho Industrial Commission presiding.

4. The *Order on Attorney's Fees* filed on or about August 31, 2010 in Steinmetz, *Claimant*, vs. G2B Co., Inc., *Employer*, and Idaho State Insurance Fund, *Surety*, IC #2008-002191, and all other decisions and orders denying Seiniger Law Offices, P.A. as the Real Party in Interest any claimed attorneys fees entered in the above entitled action, the Honorable Idaho Industrial Commission presiding.
5. The parties have a right to appeal to the Idaho Supreme Court, and the orders described above are appealable orders under and pursuant to Rule 11(d), I.A.R. relating to orders of the Idaho Industrial Commission.
6. A preliminary statement of the issues on appeal which the Appellant intends to assert in the appeal:
  - a. What constitutional rights under the Idaho State Constitution and/or the United States Constitution does a claimant have in a worker's compensation matter to retain counsel of his or her choice, for all stages of the proceeding or processing of the claim, and to enter into a contract with an attorney which provides for payment for all services to be rendered?
    - i. Is it constitutional under the Idaho State Constitution and/or the United States Constitution for the Idaho Industrial Commission to limit the compensation that a claimant in a Worker's Compensation case can agree to and pay to an attorney for representation to "disputed" matters in which the attorney is "primarily or substantially" responsible for creating the right to and/or payment of benefits (known under IDAPA 17.02.08.033.01.c.ii as "available funds") pursuant to IDAPA 17.02.08.033.01.c.ii (commonly know as the charging lien "primarily or substantially" rule) or other any other statute, rule or regulation?
    - ii. Does a Claimant in a Workers' Compensation matter have the same constitutional right to hire and pay the attorney of his or her choice as the employer and its insurance company?
    - iii. In Worker's Compensation cases, does limiting the compensation of claimants' attorneys to disputed matters, but not so limiting the


compensation that can be paid to defendants' attorneys, violate the Constitutions of the State of Idaho and/or the United States?

- b. Does an attorney representing a claimant in a worker's compensation case have a constitutional right under the Idaho State Constitution or the United States Constitution to enter into and enforce an attorney's fee agreement that provides for compensation for all services rendered at all stages of the proceeding or processing of the claim?
  - i. Is it constitutional under the Idaho State Constitution or the United States Constitution for the Idaho Industrial Commission to limit the compensation that an attorney can charge a client in a Worker's Compensation case to "disputed" matters in which the attorney is "primarily or substantially" responsible for creating the right to and/or payment of benefits (known under IDAPA 17.02.08.033.01.c.ii as "available funds") pursuant to IDAPA 17.02.08.033.01.c.ii (commonly know as the charging lien "primarily or substantially" rule) or other any other statute, rule or regulation?
  - ii. Can the Idaho Industrial Commission, pursuant to IDAPA 17.02.08.033.01.c.ii (commonly know as the charging lien "primarily or substantially" rule) or otherwise, limit the compensation that an attorney can charge a client to "disputed" matters in which the attorney is "primarily or substantially" responsible for creating the right to and/or payment of benefits (known under IDAPA 17.02.08.033.01.c.ii as "available funds")?
- c. Can the Idaho Industrial Commission constitutionally enforce a regulation that forces an attorney into a position where there is at least an appearance that he is violating one or more of the Idaho Rules of Professional Responsibility by limiting his representation to only "disputed" matters where he is attorney of record in a Worker's Compensation case?
  - i. Is IDAPA 17.02.08.033.01.c.ii (commonly know as the charging lien "primarily or substantially" rule) constitutional under the Constitutions of the State of Idaho and/or the United States, generally and as applied?
  - ii. Is Seiniger Law Offices entitled to be paid a contingent fee according to the fee agreement entered into with the Claimant under the circumstances of this case as a matter of constitutional law?
- d. Was the Fee Agreement entered into between Seiniger Law Offices, P.A. and the Claimant reasonable when viewed at the time that it was entered into?

- e. All other issues raised by Appellant/Real Party in Interest in the motions, arguments, and briefings related to said appealable orders, all as of appear in the record in the Idaho Industrial Commission.
- 7. No order has been entered sealing all or any portion of the record.
- 8. Record: A reporter's transcript is not requested. Transcripts are requested only as Exhibits and not as a part of the Agency's Record.
- 9. The appellant requests the following documents to be included in the Commission's record: See attached list. The only documents the Appellant requests be included in the Agency's record are those which have not been stricken within the attached list.
- 10. I certify:
  - a. That the estimated fee for preparation of the agency's record has been paid.
  - b. That the appellate filing fee has been paid.
  - c. That service has been made upon all parties required to be served pursuant to Rule 20.

Dated October 12, 2010, 2010.

SEINIGER LAW OFFICES, P.A.

  
\_\_\_\_\_  
Wm. Breck Seiniger, Jr.  
Attorneys for Seiniger Law Offices, P.A.,  
Appellant/Real Party in Interest

## CERTIFICATE OF SERVICE

I CERTIFY that on October 12, 2010, I caused a true and correct copy of the foregoing document to be served as follows:

Alan Hull  
Anderson Julian & Hull  
250 South 5<sup>th</sup>, Ste. 700  
Boise ID 83707-7426  
Fax: (208) 344-5510  
☒ Fax

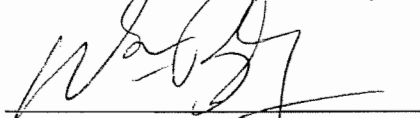
Kent W. Day  
Harmon & Day  
P.O. Box 6358  
Boise, ID 83707-6358  
Fax: (800) 972-3213  
☒ Fax

Scott Wigle  
Bowen & Bailey  
1311 W. Jefferson  
Boise ID 83701-1007  
Fax: (208) 344-9670  
☒ Fax

Cody Drotzman, Claimant  
4547 N. Anchor Way  
Boise, ID 83703  
☒ Regular mail

Ronald D. Coston  
State Insurance Fund  
P.O. Box 83720  
Boise, ID 83720-0044  
Fax: (208) 332-2175  
☒ Fax

SEINIGER LAW OFFICES, P.A.

  
Wm. Breck Seiniger, Jr.



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# In the Supreme Court of the State of Idaho

SEINIGER LAW OFFICES, P.A.,

Real Party in Interest-Appellant,

and

MARIA GOMEZ,

Claimant,

v.

NAMPA LODGING INVESTORS, LLC,  
Employer, and LIBERTY NORTHWEST  
INSURANCE COMPANY, Surety,

Defendants-Respondents.

SEINIGER LAW OFFICES, P.A.,

Real Party in Interest-Appellant,

and

LAUREL KULM,

Claimant,

v.

MERCY MEDICAL CENTER, Employer, and  
INDUSTRIAL CLAIMS MANAGEMENT,  
Surety,

Defendants-Respondents.

SEINIGER LAW OFFICES, P.A.,

Real Party in Interest-Appellant,

and

CODY DROTZMAN,

Claimant,

ORDER CONDITIONALLY  
DISMISSING APPEAL

Supreme Court Docket No. 38037-2010  
Industrial Commission No. 2005-510285

Industrial Commission No. 2005-12770

Industrial Commission No. 2006-6711

ORDER CONDITIONALLY DISMISSING APPEAL – Docket No. 38037-2010

RECEIVED  
OCT 14 A 10:26  
INDUSTRIAL COMMISSION

v.

COORS BREWING COMPANY, Employer,  
and COORS BREWING COMPANY, Self-  
Insured,

Defendants-Respondents.

SEINIGER LAW OFFICES, P.A.,

Real Party in Interest-Appellant,

and

TIM STIENMETZ,

Claimant

v.

G2B CO., INC., Employer, and IDAHO  
STATE INSURANCE FUND,

Defendants-Respondents.

Industrial Commission No. 2008-2191

The Notice of Appeal in the above captioned matter was filed September 10, 2010, in the Industrial Commission from the orders on attorney fees entered as follows:

June 8, 2010, in IC 2006-006711, DROTZMAN v. COORS BREWING CO.,  
July 22, 2010, in IC 2005-510285, GOMEZ v. NAMPA LODGING INVESTORS, INC.,  
July 26, 2010, in IC 2006-012770, KLUM v. MERCY MEDICAL CENTER, and  
August 31, 2010, in IC 2008-002191, STEINMETZ v. G2B CO., INC.

These cases were consolidated in an order entered by the Industrial Commission on September 2, 2010, prior to the filing of the Notice of Appeal on September 10, 2010. Industrial Commission Nos. 2006-006711, 2005-510285 and 2006-012770 appear not to have been timely filed from the orders on attorney fees; however, the Notice of Appeal filed September 10, 2010, appears to have been timely filed from the ORDER ON ATTORNEY FEES filed in IC 2008-002191 on August 31, 2010, in STEINMETZ v. G2B CO., INC. Furthermore, it is not clear who the Appellant is naming as Respondent in the Notice of Appeal. Therefore, after due consideration and good cause appearing,

IT HEREBY IS ORDERED that the NOTICE OF APPEAL be, and hereby is, CONDITIONALLY DISMISSED as to the orders on attorney fees filed as follows:

June 8, 2010, in IC 2006-006711, DROTZMAN v. COORS BREWING CO.,

July 22, 2010, in IC 2005-510285, GOMEZ v. NAMPA LODGING INVESTORS, INC.,

and

July 26, 2010, in IC 2006-012770, KLUM v. MERCY MEDICAL CENTER

for the reason the Notice of Appeal appears not to have been timely filed from these three orders; however, the Appellant may file a RESPONSE with this Court ON OR BEFORE TWENTY-ONE (21) DAYS FROM THE DATE OF THIS ORDER, which shall show good cause, if any exists, why the Notice of Appeal should be considered as timely filed from these three cases, and should not be dismissed from this appeal.

IT FURTHER IS ORDERED that *after* the resolution of the timeliness issues addressed above, Appellant shall file an Amended Notice of Appeal naming the actual Respondent in this appeal.

IT FURTHER IS ORDERED that proceedings in this appeal are SUSPENDED until further Order of this Court.

DATED this 13 day of October 2010.

For the Supreme Court

Stephen W. Kenyon  
Stephen W. Kenyon, Clerk

cc: Counsel of Record  
Industrial Commission Secretary



ORIGINAL

Wm. Breck Seiniger, Jr. (ISB # 2387)

Andrew C. Marsh (ISB # 6588)

SEINIGER LAW OFFICES, P.A.

942 W. Myrtle Street

Boise, Idaho 83702

Phone: (208) 345-1000

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Attorneys for Claimant, Appellant/Real Party in Interest

Email: Andrew@SeinigerLaw.com, WBS@SeinigerLaw.com

2010 OCT 14 P 4: 29  
RECEIVED  
INDUSTRIAL COMMISSION

IN THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

**Maria Gomez, Claimant,**

and

**Seiniger Law Offices, P.A.,**

*Appellant/Real Party in Interest*

VS.

**Nampa Lodging Investors LLC, Employer,**

**and Liberty Northwest Ins. Corp., Surety,**

*Defendants/Respondents*

**Laurel Kulm, Claimant,**

and

**Seiniger Law Offices, P.A.,**

*Appellant/Real Party in Interest*

VS.

**Mercy Medical Center, Employer, and**

**Industrial Claims Management, Surety,**

*Defendants/Respondents*

**Cody Drotzman, Claimant,**

and

**Seiniger Law Offices, P.A.,**

*Appellant/Real Party in Interest*

VS.

**Coors Brewing Company, Employer, and**

**Coors Brewing Company, Self-Insured**

*Defendants/Respondents*

**Tim Stienmetz, Claimant,**

and

**Seiniger Law Offices, P.A.,**

**I.C. No. 05-510285**

**I.C. No. 06-012770**

**I.C. No. 06-006711**

**I.C. No. 08-002191**

**(Consolidated Cases)**

**Motion To Dismiss From Appeal**

**Consolidated Case I.C. 06-006711: Seiniger Law Offices, P.A., Appellant/Real Party in Interest, vs. Coors Brewing Company, Employer, and Coors Brewing Company, Self-Insured, Defendants/Respondents**

**Motion To Dismiss From Appeal Consolidated Case I.C. 06-006711: Seiniger Law Offices, P.A., Appellant/Real Party in Interest, vs. Coors Brewing Company, Employer, and Coors Brewing Company, Self-Insured, Defendants/Respondents -- P. 1**

643

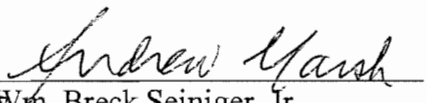
*Appellant/Real Party in Interest*  
vs.  
**G2B Co., Inc., Employer, and Idaho State  
Insurance Fund, Surety,**

*Defendants/Respondents*

Comes now Seiniger Law Offices, P.A., *Appellant/Real Party in Interest*, and moves this Honorable Court to enter its order dismissing the consolidated appeal in Cody Drotzman, *Claimant*, and Seiniger Law Offices, P.A., *Appellant/Real Party in Interest*, vs. Coors Brewing Company, *Employer*, and Coors Brewing Company, *Self-Insured, Defendants/Respondents*. This motion is based upon the stipulation of the parties to the appeal entered into by counsel filed herewith.

Dated this 14 day of October, 2010.

SEINIGER LAW OFFICES, P.A.

*for*   
Wm. Breck Seiniger, Jr.  
Attorneys for Seiniger Law Offices, P.A.,  
*Appellant/Real Party in Interest*

### CERTIFICATE OF SERVICE

I CERTIFY that on this 14 day of October, 2010, I caused a true and correct copy of the foregoing document to be served as follows:

Alan Hull  
Anderson Julian & Hull  
250 South 5<sup>th</sup>, Ste. 700  
Boise ID 83707-7426  
Fax: (208) 344-5510  
☒ Fax

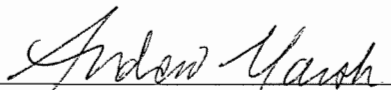
Kent W. Day  
Harmon & Day  
P.O. Box 6358  
Boise, ID 83707-6358  
Fax: (800) 972-3213  
☒ Fax

Scott Wigle  
Bowen & Bailey  
1311 W. Jefferson  
Boise ID 83701-1007  
Fax: (208) 344-9670  
☒ Fax

Cody Drotzman, Claimant  
4547 N. Anchor Way  
Boise, ID 83703  
☒ Regular mail

Ronald D. Coston  
State Insurance Fund  
P.O. Box 83720  
Boise, ID 83720-0044  
Fax: (208) 332-2175  
☒ Fax

SEINIGER LAW OFFICES, P.A.

  
for Wm. Breck Seiniger, Jr.

ORIGINAL

Wm. Breck Seiniger, Jr. (ISB # 2387)  
Andrew C. Marsh (ISB # 6588)  
SEINIGER LAW OFFICES, P.A.  
942 W. Myrtle Street  
Boise, Idaho 83702  
Phone: (208) 345-1000  
Fax: (208) 345-4700  
Attorneys for Claimant, Appellant/Real Party in Interest  
Email: Andrew@SeinigerLaw.com, WBS@SeinigerLaw.com

2010 OCT 14 P 4: 29  
RECEIVED  
INDUSTRIAL COMMISSION

IN THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

**Maria Gomez, Claimant,**  
and  
**Seiniger Law Offices, P.A.,**

*Appellant/Real Party in Interest*  
VS.

**Nampa Lodging Investors LLC, Employer,**  
and **Liberty Northwest Ins. Corp., Surety,**  
*Defendants/Respondents*

**Laurel Kulm, Claimant,**  
and  
**Seiniger Law Offices, P.A.,**

*Appellant/Real Party in Interest*  
VS.

**Mercy Medical Center, Employer, and**  
**Industrial Claims Management, Surety,**  
*Defendants/Respondents*

**Cody Drotzman, Claimant,**  
and  
**Seiniger Law Offices, P.A.,**

*Appellant/Real Party in Interest*  
VS.

**Coors Brewing Company, Employer, and**  
**Coors Brewing Company, Self-Insured**  
*Defendants/Respondents*

**Tim Stienmetz, Claimant,**  
and  
**Seiniger Law Offices, P.A.,**

**I.C. No. 05-510285**  
**I.C. No. 06-012770**  
**I.C. No. 06-006711**  
**I.C. No. 08-002191**

(Consolidated Cases)

**Stipulation To Dismiss From Appeal**  
**Consolidated Case I.C. 06-006711: Seiniger**  
**Law Offices, P.A., Appellant/Real Party in**  
**Interest, vs. Coors Brewing Company,**  
**Employer, and Coors Brewing Company,**  
**Self-Insured, Defendants/Respondents**

**Stipulation To Dismiss From Appeal Consolidated Case I.C. 06-006711: Seiniger Law**  
**Offices, P.A., Appellant/Real Party in Interest, vs. Coors Brewing Company, Employer, and**  
**Coors Brewing Company, Self-Insured, Defendants/Respondents, I.C. 06-006711 -- P. 1**

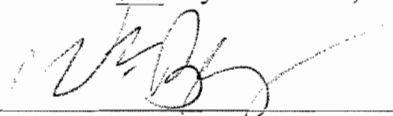
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*Appellant/Real Party in Interest*  
VS.  
**G2B Co., Inc., Employer, and Idaho State  
Insurance Fund, Surety,**  
*Defendants/Respondents*

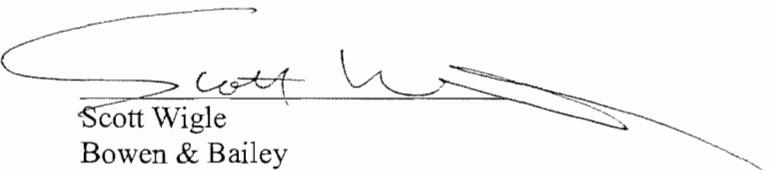
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Comes now the undersigned Cody Drotzman, *Claimant*, and Seiniger Law Offices, P.A., *Appellant/Real Party in Interest*, vs. Coors Brewing Company, *Employer*, and Coors Brewing Company, *Self-Insured, Defendants/Respondents*, I.C. No. 06-006711 and stipulate that the consolidated appeal of said case be dismissed with prejudice, each party to bear their own costs and attorneys fees.

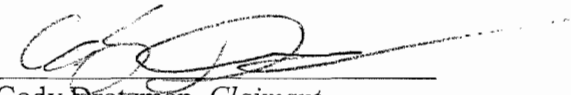
Dated this 14 day of October, 2010.

  
Wm. Breck Seiniger, Jr.  
Attorneys for Seiniger Law Offices, P.A.,  
*Appellant/Real Party in Interest*

Dated this 14 day of October, 2010.

  
Scott Wagle  
Bowen & Bailey  
Attorney for Coors Brewing Company, *Employer*,  
and Coors Brewing Company, *Self-Insured, Defendants/Respondents*

Dated this 14 day of October, 2010.

  
Cody Drotzman, *Claimant*  
4547 N. Anchor Way  
Boise, ID 83703

**Stipulation To Dismiss From Appeal Consolidated Case I.C. 06-006711: Seiniger Law  
Offices, P.A., *Appellant/Real Party in Interest*, vs. Coors Brewing Company, *Employer*, and  
Coors Brewing Company, *Self-Insured, Defendants/Respondents*, I.C. 06-006711 -- P. 2**

## CERTIFICATE OF SERVICE

I CERTIFY that on this 14 day of October, 2010, I caused a true and correct copy of the foregoing document to be served as follows:

Alan Hull  
Anderson Julian & Hull  
250 South 5<sup>th</sup>, Ste. 700  
Boise ID 83707-7426  
Fax: (208) 344-5510  
☒ Fax

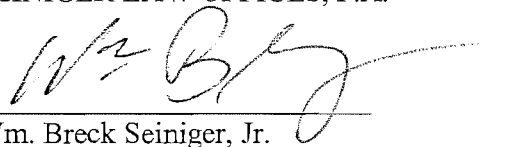
Kent W. Day  
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Scott Wigle  
Bowen & Bailey  
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Boise ID 83701-1007  
Fax: (208) 344-9670  
☒ Fax

Cody Drotzman, Claimant  
4547 N. Anchor Way  
Boise, ID 83703  
☒ Regular mail **HAND DELIVERY**

Ronald D. Coston  
State Insurance Fund  
P.O. Box 83720  
Boise, ID 83720-0044  
Fax: (208) 332-2175  
☒ Fax

SEINIGER LAW OFFICES, P.A.

  
Wm. Breck Seiniger, Jr.

Stipulation To Dismiss From Appeal Consolidated Case I.C. 06-006711: Seiniger Law  
Offices, P.A., *Appellant/Real Party in Interest*, vs. Coors Brewing Company, *Employer*, and  
Coors Brewing Company, *Self-Insured, Defendants/Respondents*, I.C. 06-006711 -- P. 3

# In the Supreme Court of the State of Idaho

SEINIGER LAW OFFICES, P.A.,

Real Party in Interest-Appellant,

and

MARIA GOMEZ,

Claimant,

v.

NAMPA LODGING INVESTORS, LLC,  
Employer, and LIBERTY NORTHWEST  
INSURANCE COMPANY, Surety,

Defendants-Respondents.

SEINIGER LAW OFFICES, P.A.,

Real Party in Interest-Appellant,

and

LAUREL KULM,

Claimant,

v.

MERCY MEDICAL CENTER, Employer, and  
INDUSTRIAL CLAIMS MANAGEMENT,  
Surety,

Defendants-Respondents.

SEINIGER LAW OFFICES, P.A.,

Real Party in Interest-Appellant,

and

CODY DROTZMAN,

ORDER WITHDRAWING  
CONDITIONAL DISMISSAL ORDER  
ENTERED 10-13-2010, AND  
SUBSEQUENTLY REMANDING THIS  
CASE TO THE INDUSTRIAL  
COMMISSION FOR ENTRY OF A  
FINAL ORDER

Supreme Court Docket No. 38037-2010 t  
Industrial Commission No. 2005-510285

Industrial Commission No. 2005-12770

Industrial Commission No. 2006-6711

Claimant,	)	
	)	
v.	)	
	)	
COORS BREWING COMPANY, Employer,	)	
and COORS BREWING COMPANY, Self-	)	
Insured,	)	
	)	
Defendants-Respondents.	)	
	)	
SEINIGER LAW OFFICES, P.A.,	)	
	)	
Real Party in Interest-Appellant,	)	
	)	
and	)	
	)	
TIM STIENMETZ,	)	
	)	Industrial Commission No. 2008-2191
Claimant	)	
	)	
v.	)	
	)	
G2B CO., INC., Employer, and IDAHO	)	
STATE INSURANCE FUND,	)	
	)	
Defendants-Respondents.	)	

The Notice of Appeal in the above captioned matter was filed **September 2, 2010**, in the Industrial Commission from the orders on attorney fees entered as follows:

June 8, 2010, in IC 2006-006711, DROTZMAN v. COORS BREWING CO.

July 22, 2010, in IC 2005-510285, GOMEZ v. NAMPA LODGING INVESTORS, INC.

July 26, 2010, in IC 2006-012770, KLUM v. MERCY MEDICAL CENTER, and

August 31, 2010, in IC 2008-002191, STEINMETZ v. G2B CO., INC.

These cases were consolidated in an order entered by the Industrial Commission on September 2, 2010. An AMENDED NOTICE OF APPEAL was filed in the Industrial Commission on October 12, 2010, removing Industrial Commission Case No. 2006-006711, DROTZMAN v. COORS BREWING CO., from the consolidated cases being appealed. Furthermore, it appears there is no Respondent on appeal. It further appears that a judgment or order set forth on a separate document has yet to be entered as clarified by the Court's recent decisions in *Spokane Structures v. Equitable Investment*, 148 Id 616, 226 P.3d 1263 (2010) and *TJT, Inc. v. Mori*, 148 Id 825, 230 P.3d 435 (2010), and this appeal is premature. As provided by

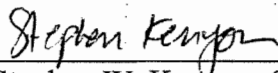


I.A.R. 17(e) (2), this appeal shall be suspended until entry of judgment or order that declares the matter is final and is an appealable judgment or order and on its face states the relief granted or denied. Therefore, good cause appearing,

IT HEREBY IS ORDERED that the ORDER CONDITIONALLY DISMISSING APPEAL entered October 13, 2010 be and hereby is WITHDRAWN, and the matter of entry of a final, appealable judgment or order be, and hereby is, REMANDED to the Industrial Commission and proceedings in this appeal shall be SUSPENDED to allow for the entry of a final, appealable judgment or order, at which time this appeal shall proceed.

DATED this 10<sup>th</sup> day of November 2010.

For the Supreme Court

  
\_\_\_\_\_  
Stephen W. Kenyon, Clerk

cc: Counsel of Record  
Industrial Comm., Sec.

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SEINIGER LAW OFFICES, P.A., )

Real Party in Interest, )

v. )

IDAHO INDUSTRIAL COMMISSION, )

Respondent. )

MARIA GOMEZ, )

Claimant, )

v. )

NAMPA LODGING INVESTORS, LLC, )

Employer, and LIBERTY NORTHWEST )

INS. CORPORATION, Surety, )

Defendants. )

SEINIGER LAW OFFICES, P.A., )

Real Party in Interest, )

v. )

IDAHO INDUSTRIAL COMMISSION, )

Respondent. )

LAUREL KULM, )

Claimant, )

v. )

MERCY MEDICAL CENTER, Employer, )

and INDUSTRIAL CLAIMS )

MANAGEMENT, Surety, )

Defendants. )

SEINIGER LAW OFFICES, P.A., )

Real Party in Interest, )

IC 2005-510285

FINAL ORDER ON  
ATTORNEY FEES

FILED

JUL 11 2005

INDUSTRIAL COMMISSION

IC 2006-012770

IC 2006-006711

	)
v.	)
	)
IDAHO INDUSTRIAL COMMISSION,	)
	)
Respondent.	)
	)
CODY DROTZMAN,	)
	)
Claimant,	)
	)
v.	)
	)
COORS BREWING COMPANY,	)
Employer, and COORS BREWING	)
COMPANY, Self-Insured,	)
Defendants.	)
<hr/>	
SEINIGER LAW OFFICES, P.A.,	)
	)
Real Party in Interest,	)
	)
v.	)
	)
IDAHO INDUSTRIAL COMMISSION,	)
	)
Respondent.	)
	)
TIM STIENMETZ,	)
	)
Claimant,	)
	)
v.	)
	)
G2B CO., INC., Employer, and IDAHO	)
STATE INSURANCE FUND, Surety,	)
Defendants.	)
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IC 2008-002191

This matter is on remand from the Idaho Supreme Court for the entry of a separate order which, on its face, states the relief granted or denied. The four matters detailed in the caption were consolidated after a decision was issued on each case. This order shall constitute the final order on all four matters. In each case, the Real Party in Interest, Seiniger Law Offices, has

requested attorney fees from a lump sum settlement agreement entered into by Claimant and Defendants, respectively. In each case, Seiniger Law Offices has been denied a portion of the attorney fees it seeks on the grounds that Seiniger Law Offices has been unable to prove it primarily and substantially obtained the funds from which it seeks to be paid.

In *Kulm v. Mercy Medical Center*, issued on May 20, 2010, the Commission approved \$4,415.31 in attorney fees and declined to approve \$1,942.19 in attorney fees.

In *Drotzman v. Coors Brewing Co.*, issued June 8, 2010, the Commission approved \$1,869.22 in attorney fees and declined to approve \$2,330.62 in attorney fees.

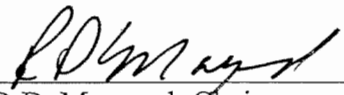
In *Gomez v. Nampa Lodging Investors, Inc.*, issued July 22, 2010, the Commission approved \$3,360.64 in attorney fees and declined to approve \$933.28 in attorney fees.

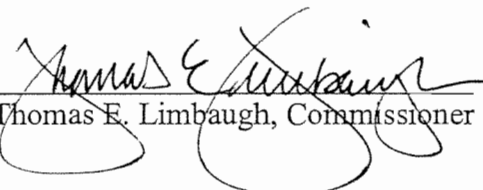
In *Steinmetz v. G2B Co., Inc.*, issued August 31, 2010, the Commission approved \$7,225.00 in attorney fees and declined to approve \$5,098.53 in attorney fees.

This is the final appealable order setting forth the relief granted and denied. Spokane Structures v. Equitable Investment, 148 Idaho 616, 226 P.3d 1263 (2010); TJT, Inc., v. Mori, 148 Idaho 825, 230 P.3d 435 (2010). Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 29<sup>th</sup> day of December, 2010.

INDUSTRIAL COMMISSION

  
R.D. Maynard, Chairman

  
Thomas E. Limbaugh, Commissioner

ATTEST:

Assistant Commission Secretary



Thomas P. Baskin, Commissioner

### CERTIFICATE OF SERVICE

I hereby certify that on the 29<sup>th</sup> day of December, 2010 a true and correct copy of **FINAL ORDER ON ATTORNEY FEES** was served by regular United States Mail upon:

William Breck Seiniger, Jr.  
Andrew C. Marsh  
Seiniger Law Offices, P.A.  
924 W. Myrtle Street  
Boise, ID 83702

Kent W. Day (Nampa Lodging Investors)  
Harmon and Day  
PO Box 6358  
Boise, ID 83707-6358

Alan K. Hull (Mercy Medical Center)  
Anderson Julian & Hull  
PO Box 7426  
Boise, ID 83707-7426

Scott Wigle (Coors Brewing Co.)  
Bowen and Bailey  
PO Box 1007  
Boise, ID 83701-1007

Ronald D. Coston (G2B Co., Inc.)  
State Insurance Fund  
State House Mail  
PO Box 83720  
Boise, ID 83720-0044

Idaho Supreme Court  
Clerk of the Courts  
STATE HOUSE MAIL  
PO Box 83720  
Boise, ID 83720-0101

mw



A handwritten signature in cursive script, appearing to read "Matthew", is written over a horizontal line.

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

SEINIGER LAW OFFICES, P.A., )

Real Party in Interest/Appellant, )

and )

MARIA GOMEZ, Claimant (IC 2005-510285), )

v. )

NAMPA LODGING INVESTORS, LLC, )  
Employer, and LIBERTY NORTHWEST )  
INS. CORPORATION, Surety, )

Defendants/Respondents. )

and )

LAUREL KULM, Claimant (IC 2006-012770), )

v. )

MERCY MEDICAL CENTER, Employer, )  
and INDUSTRIAL CLAIMS )  
MANAGEMENT, Surety, )

Defendants/Respondents. )

and )

TIM STIENMETZ, Claimant (IC 2008-002191), )

v. )

G2B CO., INC., Employer, and IDAHO )  
STATE INSURANCE FUND, Surety, )

Defendants/Respondents. )

SUPREME COURT NO. 38037

MOTION FOR EXTENSION  
OF TIME BY  
ADMINISTRATIVE AGENCY

The Industrial Commission for the State of Idaho, the administrative agency who is preparing the record in this case, hereby moves this Court for an extension of time to prepare and lodge the record until April 8, 2011.

MOTION FOR EXTENSION OF TIME BY  
ADMINISTRATIVE AGENCY (S.C. Docket # 38037 –  
Seiniger v. Gomez-Kulm-Stienmetz) - 1

657

1. The date for lodging the record is March 9, 2011.
2. Were any previous extensions granted in whole or in part? No.
3. None of the record out of an estimated total of 2,420 pages have been completed.
4. The Industrial Commission is requesting an extension of THIRTY (30) days for the following reasons: The Industrial Commission Adjudication Division experienced staff turnover soon after the Notice of Appeal was filed. This turnover and subsequent training has impeded the preparation of the agency record, which is voluminous and has required considerable time to collect and organize the documents to prepare the record.
5. Counsel for the Appellant/Claimants has been contacted and there is no objection by counsel to this request for the extension.

DATED this 16<sup>th</sup> day of February, 2011.



  
Marie Wilson  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I CERTIFY that on the 16<sup>th</sup> day of February, 2011, a true and correct copy of the  
MOTION FOR EXTENSION OF TIME BY ADMINISTRATIVE AGENCY was served by  
*facsimile processing machine* upon:

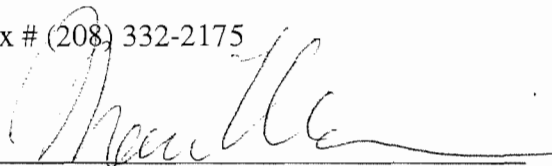
William Breck Seiniger, Jr.                      Fax # (208) 345-4700  
Andrew C. Marsh

Kent W. Day                                      Fax # (800) 972-3213

Alan K. Hull                                      Fax # (208) 344-5510

Ronald D. Coston                              Fax # (208) 332-2175

amw





# In the Supreme Court of the State of Idaho

SEINIGER LAW OFFICES, P.A.,

Real Party in Interest-Appellant,

and

MARIA GOMEZ,

Claimant,

v.

NAMPA LODGING INVESTORS, LLC,  
Employer, and LIBERTY NORTHWEST  
INSURANCE COMPANY, Surety,

Defendants-Respondents.

SEINIGER LAW OFFICES, P.A.,

Real Party in Interest-Appellant,

and

LAUREL KULM,

Claimant,

v.

MERCY MEDICAL CENTER, Employer, and  
INDUSTRIAL CLAIMS MANAGEMENT,  
Surety,

Defendants-Respondents.

ORDER GRANTING MOTION FOR  
EXTENSION OF TIME BY  
ADMINISTRATIVE AGENCY

Supreme Court Docket No. 38037-2010  
Industrial Commission No. 2005-510285

Industrial Commission No. 2005-12770

RECEIVED  
INDUSTRIAL COMMISSION  
FEB 18 A 10:33

SEINIGER LAW OFFICES, P.A.,  
Real Party in Interest-Appellant,

and

CODY DROTZMAN,  
Claimant,

v.

COORS BREWING COMPANY, Employer,  
and COORS BREWING COMPANY, Self-  
Insured,

Defendants-Respondents.

Industrial Commission No. 2006-6711

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SEINIGER LAW OFFICES, P.A.,

Real Party in Interest-Appellant,

and

TIM STIENMETZ,  
Claimant

v.

G2B CO., INC., Employer, and IDAHO  
STATE INSURANCE FUND,

Defendants-Respondents.

Industrial Commission No. 2008-2191

A MOTION FOR EXTENSION OF TIME BY ADMINISTRATIVE AGENCY was filed with this Court by Marie Wilson on behalf of the Industrial Commission on February 16, 2011, requesting this Court for an extension of time to prepare and lodge the Agency Record in this appeal until April 8, 2011. Therefore, good cause appearing;

ORDER GRANTING MOTION FOR EXTENSION OF TIME BY ADMINISTRATIVE AGENCY

IT HEREBY IS ORDERED that Assistant Commission Secretary Marie Wilson's MOTION FOR EXTENSION OF TIME be, and hereby is, GRANTED and Assistant Commission Secretary Marie Wilson shall be allowed an EXTENSION OF TIME UNTIL APRIL 8, 2011, to prepare and serve the Agency Record upon counsel.

DATED this 17<sup>th</sup> day of February 2011.

For the Supreme Court

*Stephen W. Kenyon*

Stephen W. Kenyon, Clerk

cc: Counsel of Record  
Industrial Commission



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WASDEN

September 15, 2011

FILED

SEP 15 2011

INDUSTRIAL COMMISSION

Marie Wilson, Agency Clerk  
Idaho Industrial Commission  
700 S CLEARWATER LN  
BOISE, ID 83720-0041

RE: Clerk's Record and Reporter's Transcript – Supreme Court Docket No. 38037-2010, Seiniger Law Offices, P.A. v. Nampa Lodging Investors, LLC

Dear Ms. Wilson:

As counsel of record for Intervenor-Respondent, State of Idaho, *ex rel.*, Industrial Commission, in the above noted case, I request that in addition to the documents asked for by Appellants in their Amended Notice of Appeal, you include those documents identified on the attached list in the Clerk's Record on appeal. I also ask that the Reporter's Transcript on appeal include transcripts of all hearings held before the Industrial Commission in those cases being appealed.

Of course, any additional costs incurred in complying with this request should not be billed to Appellants.

I can be reached at 334-6067, if you have any questions.

Sincerely,

A handwritten signature in black ink, reading "Blair D. Jaynes".

Blair D. Jaynes  
Deputy Attorney General  
Idaho Industrial Commission

Encl.: Document List

CC: Wm. Breck Seiniger, Jr.  
Seiniger Law Offices, P.A.  
942 W MYRTLE ST  
BOISE, ID 83702-7060

**Seiniger Law Offices, P.A. v. Nampa Lodging Investors, LLC**  
**Supreme Court Docket No. 38037-2010**

**Additional Documents Requested in Clerks Record**

**KULM CASE:**

1. Stipulation and agreement, release and lump sum settlement, and order of approval and discharge, filed June 26, 2009
2. Memorandum of law in support of form 1022, filed July 24, 2009
3. Affidavit of Andrew C. Marsh in support of memorandum of law, filed July 24, 2009
4. Scott McDougall's letter to Andrew Marsh, dated September 3, 2009
5. Order approving in part stipulation and agreement, release and lump sum settlement, filed September 4, 2009
6. Motion to reconsider the order approving in part stipulation and agreement, release and lump sum settlement, and memorandum of law in support of motion, filed September 18, 2009
7. Claimant's counsel's opening brief, filed January 19, 2010
8. Supplemental memorandum in support of motion to reconsider order denying attorney fees and to issue a substitute opinion, filed June 16, 2010

**STIENMETZ CASE:**

1. Lump sum agreement, filed December 23, 2009
2. Scott McDougall's letter to Andrew Marsh, dated January 13, 2010
3. Order approving in part lump sum agreement, filed January 26, 2010
4. Claimant's counsel's opening brief, filed July 8, 2010

**GOMEZ CASE:**

1. Memorandum of law in support of form 1022, with affidavit of Andrew C. Marsh in support of memorandum of law, marked as Exhibit A, filed October 23, 2009
2. Stipulation and agreement of lump sum discharge and order of approval and discharge, filed October 2, 2009
3. Scott McDougall's letter, dated December 24, 2009
4. Order approving in part stipulation and agreement of lump sum discharge, filed January 4, 2009
5. Claimant's counsel's opening brief, filed June 11, 2010

### **CERTIFICATION OF RECORD**

I, Marie Wilson, the undersigned Assistant Commission Secretary of the Industrial Commission, do hereby certify that the foregoing record contains true and correct copies of all pleadings, documents, and papers designated to be included in the Agency's Record Supreme Court No. 38037 on appeal by Rule 28(3) of the Idaho Appellate Rules and by the Amended Notice of Appeal, pursuant to the provisions of Rule 28(a).

I further certify that all exhibits offered or admitted and any additional documents in this proceeding, if any, are correctly listed in the List of Exhibits. Said exhibits and additional documents will be lodged with the Supreme Court upon settlement of the Agency's Record herein.

DATED this 23rd day of September, 2011.

  
Assistant Commission Secretary



BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

SEINIGER LAW OFFICES, P.A., )

Real Party in Interest/Appellant, )

and )

MARIA GOMEZ, Claimant (IC 2005-510285), )

v. )

NAMPA LODGING INVESTORS, LLC, )

Employer, and LIBERTY NORTHWEST )

INS. CORPORATION, Surety, )

Defendants/Respondents, )

and )

STATE OF IDAHO, ex rel., INDUSTRIAL )

COMMISSION, )

Intervenor/Respondent. )

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SEINIGER LAW OFFICES, P.A., )

Real Party in Interest/Appellant, )

and )

LAUREL KULM, Claimant, (IC 2006-012770), )

v. )

MERCY MEDICAL CENTER, Employer, )

and INDUSTRIAL CLAIMS )

MANAGEMENT, Surety, )

Defendants/Respondents, )

and )

SUPREME COURT NO. 38037

NOTICE OF COMPLETION

STATE OF IDAHO, ex rel., INDUSTRIAL )  
COMMISSION, )

Intervenor/Respondent. )  
\_\_\_\_\_ )

SEINIGER LAW OFFICES, P.A., )

Real Party in Interest/Appellant, )

and )

CODY DROTZMAN, Claimant (IC2006-006711), )  
v. )

COORS BREWING COMPANY, Employer, and )  
COORS BREWING COMPANY, Self-Insured, )

Defendants/Respondents, )

STATE OF IDAHO, ex rel., INDUSTRIAL )  
COMMISSION, )

Intervenor/Respondent. )  
\_\_\_\_\_ )

SEINIGER LAW OFFICES, P.A., )

Real Party in Interest/Appellant, )

and )

TIM STIENMETZ, Claimant (IC 2008-002191), )  
v. )

G2B CO., INC., Employer, and IDAHO )  
STATE INSURANCE FUND, Surety, )

Defendants/Respondents, )

STATE OF IDAHO, ex rel., INDUSTRIAL )  
COMMISSION, )

Intervenor/Respondent. )  
\_\_\_\_\_ )



TO: STEPHEN KENYON, Clerk of the Court; and SEINIGER LAW OFFICES, P.A., Real Party in Interest/Appellant.

YOU ARE HEREBY NOTIFIED that the Agency's Record was completed on this date, and, pursuant to Rule 24(a) and Rule 27(a), Idaho Appellate Rules, copies of the same have been served by personal delivery upon the following:

Attorney for Appellant: William Breck Seiniger, Jr.  
Andrew C. Marsh  
Seiniger Law Offices, P.A.  
924 W. Myrtle Street  
Boise, ID 83702

Attorney for Respondent: Blair D. Jaynes (Industrial Commission)  
Deputy Attorney General  
Industrial Commission  
700 S Clearwater Lane  
Boise, ID 83712

YOUR ARE FURTHER NOTIFIED that on this date, a true and correct copy of this NOTICE OF COMPLETION was served by regular United States mail, upon the following:

Kent W. Day (Nampa Lodging Investors)  
Harmon and Day  
PO Box 6358  
Boise, ID 83707-6358

Alan K. Hull (Mercy Medical Center)  
Anderson Julian & Hull  
PO Box 7426  
Boise, ID 83707-7426

Ronald D. Coston (G2B Co., Inc.)  
Idaho State Insurance Fund  
Statehouse Mail  
PO Box 83720  
Boise, ID 83720-0044

and that each of the foregoing have declined a copy of the Agency's Record.

YOU ARE FURTHER NOTIFIED that, pursuant to Rule 29(a), Idaho Appellate Rules, all parties have twenty-eight days from this date, which will be on or before October 21, 2011, in which to file objections to the Agency's Record, including requests for corrections, additions or deletions. In the event no objections to the Agency's Record are filed within the twenty-eight day period, the Agency's Record shall be deemed settled.

DATED this 23<sup>rd</sup> day of September, 2011.

  
Assistant Commission Secretary

